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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 363

GEORGIA POWER COMPANY, PETITIONER,

vs.

CITY OF DECATUR

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED AUGUST 30, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,494)

( )

SUPREME COURT OF THE UNITED STATES

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IN SUPERIOR COURT OF DE KALB COUNTY

Bill of Exceptions—Filed Sept. 24, 1928; in Supreme Court, Oct. 2, 1928

Caption

Be it remembered that on the 15th day of September, 1928 there came on to be heard in the Superior Court of De Kalb County Georgia and before the Honorable John B. Hutcheson, Judge of said court the case of the City of Decatur vs. Georgia Railway & Power Company, the same being a petition for equitable injunction and other relief by the plaintiff and a cross-bill praying equitable relief by defendant, all as contained in the pleadings in said case.

By agreement of parties the Judge aforesaid heard said case as both Judge and jury, you tried the same under such agreement upon both the law and the facts as introduced in evidence, and rendered a final decree in said case.

Upon said hearing the following evidence was introduced as a statement of facts agreed upon by the parties, to wit:

Statement of Facts

"(1) The Collins Park & Belt Railroad Company was incorporated under the Acts of the General Assembly of the State of Georgia, approved August 16th, 1889 (See Acts 1889 page 211) under the corporate name and style of "Collins Park & Belt Railroad Company." Said act is as follows:

Section 1. Be it enacted by the General Assembly of the State of Georgia, That James D. Collins, H. L. Woodward, S. H. Venable, J. R. Collins, Charles E. Thompson, S. K. Ozborn, W. J. Collins and Thomas McClellan, and their associates, successors and assigns, be and the same are hereby incorporated and made a body politic and corporate under the name and style of "Collins Park and Belt Railroad Company."

Section 2. Be it further enacted, That before said Company shall begin its work upon any of its lines of railroad

in the City of Atlanta, it shall obtain the assent of the corporate authorities of said city to the same; and before it shall begin its work on any of the public roads in the counties herein mentioned, it shall first obtain the assent of [fol. 2] the authorities therein having charge of roads, respectively.

Section 3. Be it further enacted, That said corporation shall have full power and authority to survey, lay out, construct and equip, use and enjoy, lines or routes of street railroad in the City of Atlanta, and in the County of Fulton, as follows, to wit; Lines and routes running to and from such points as it may desire, on and over the following streets in Atlanta, to wit: Orme, North Avenue, State, Luckie, Marietta, and along such other streets as it may desire, and have authority to build a belt road around the said City of Atlanta in said County of Fulton.

Section 4. Be it further enacted, That said corporation shall also have power and authority from time to time to survey, lay out, construct, equip, use and enjoy such other routes or lines of railroad in the City of Atlanta, and in the Counties of Fulton, Gwinnett, Cobb and De Kalb, in addition to those especially named in this Act, and to extend any or all of those named, and build branches thereto whenever it deems it to its interest to do so: Provided, that before said corporation commences to construct any part of such line, or lines, or routes, it shall obtain, if such construction is to be within the corporate limits of the City of Atlanta, the consent of the proper authorities of said City. Whenever said contemplated railroad shall desire to pass over the land of another, and said railroad company and the owner of said land shall fail to agree as to compensation for such right-of-way over such lands, said owner shall have the right to select one arbitrator and the said Company shall have the right to select an arbitrator, and a third arbitrator shall be chosen as umpire, whose proceed- [fol. 2½] ings and powers shall be the same as allowed and authorized by the Code of 1882, in other cases submitted to arbitration.

Section 5. Be it further enacted, That this corporation is hereby granted all the right, powers, franchises and privileges heretofore granted to the Metropolitan Street Rail-

road Company in sections two (2), five (5), six (6), eight (8), and nine (9), of an Act entitled "An Act to incorporate the Metropolitan Street Railroad Company, and to define its rights, powers and privileges, and for other purposes," approved December 12, 1882, and said sections two, five, six, eight and nine are hereby made a part of the Collins Park and Belt Railroad Company. Said corporation by said name shall have continuous succession, and shall be able and capable to sue and to be sued, to plead and to be impleaded unto, and may have and use a common seal and may alter and renew the same at pleasure, and may make, alter and repeal such by-laws governing its members, officers, attorneys, agents, employees and persons dealing or having business with it, as it deems proper; provided, said by-laws are not in conflict with the laws of this State, or of the United States, and it may make contracts, borrow money, issue bonds, notes and other evidences of debt, and secure the same by such mortgages or deeds of trust as it deems proper. And it may acquire, purchase, receive and hold such property real and personal, as it deems best and most profitable to its purposes, and may dispose of any part thereof not absolutely necessary to the running of its road, at pleasure. It shall have power to fix rates of tolls for carriage of persons and property, and to collect the same, and it shall have all the powers, facilities, rights and franchises necessary or proper to successfully accomplish and maintain the objects of its incorporation. [fol. 3] Said corporation, for the purpose of making a connected line, or for the purpose of crossing any other street railroad, with its road, may lay its tracks upon and occupy with its railroad or tracks, any street or streets upon which any other street railroad company may have its tracks, or may have the right to lay its tracks at the time; Provided, it does not at any one place occupy more than five full city blocks front, contiguous to each other, and if the proper municipal authorities determine that the street or streets so sought to be occupied by the tracks of both roads is not side enough for both of said roads to have separate tracks, and at the same time to leave space enough for the passage of the vehicles, then, and in that event, said corporation shall have power and authority to condemn to its use such parts of said other railroad as may be necessary for the purpose of making a connected line, or of crossing any

other street railroad with its road, not exceeding in any way one place three full city blocks front contiguous to each other. Said condemnation shall be made after the decision is made as aforesaid, by said municipal authorities, that such condemnation is necessary to the convenience of the city in the exercise of its control over the streets of said city, by pursuing the provisions and mode pointed out in section six of this Act; and said track or road so condemned shall be used by each of said roads, each having equal rights thereon; and in maintaining said track or road so used in common, each company using the same shall pay a prorata in proportion to the number of cars run on said tracks; Provided, that the part of said track of any other railroad company, which may be condemned with the consent of said municipal authorities, shall be so used by each of said companies using the same that neither one shall [fol. 4] damage the business of the other nor delay its cars running upon said track so condemned.

Should said corporation find it necessary in the construction of its road or roads, to have the lands of private persons or corporations, said corporation may acquire the same by pursuing the mode pointed out and prescribed in section 12 of an Act to provide a general law for the incorporation of railroads, and to regulate the same, approved September 27, 1881, and found upon pages 161, 162 and 163 of the printed volume of laws of 1880 and 1881.

The books of subscription to the capital stock of said corporation shall be first opened under the superintendence of said persons named in the first section of this Act, or a majority of them acting in one person or by proxy, in such place, and on such day or days, as said persons, or a majority of them, may deem expedient; and all subscriptions shall be paid in cash, or that which such persons may deem its equivalent, in installments as called for by the board of directors. Said persons named shall act as a provisional board of directors until said corporation is organized, which shall be done within 30 days after the requisite subscriptions are obtained.

The affairs of said corporation shall be managed by a board of directors, to consist of five persons, themselves stockholders in their own right, a majority of whom shall constitute a quorum. They shall be elected annually by the stockholders at such time and place as may be fixed in

the by-laws, and such time and place shall be published at least ten days before the election, in some paper published in Atlanta. They shall hold their offices until their successors are elected. They shall elect one of their number president and another vice president, and they shall have such powers and duties as may be prescribed in the by- [fol. 5] laws. The directors shall have full power and authority to manage and conduct, and to prescribe rules for managing and conducting all the business of the corporation, of every kind.

Section 6. Be it further enacted, That the capital stock of said corporation shall be fifty thousand dollars, divided into shares of one hundred dollars each. Said capital stock may be increased, from time to time, to any sum not exceeding three million dollars; Provided, said increase be authorized in each instance by a direct vote of a majority of all the stock of the Company, at an annual meeting or at a meeting called for that purpose. But said corporation may organize and commence business whenever the sum of seven thousand dollars is subscribed, and this charter to remain of force for and during the period of thirty years.

Section 7. Be it further enacted, That the said corporation shall have the right to use, in the running of its trains, animal, steam, electric and all other mechanical powers now known or hereafter discovered.

Section 8. Be it further enacted, That the incorporators herein named shall constitute a board of directors, who shall hold their offices until their successors are elected and qualified.

Section 9. Be it further enacted, that the rights, powers and privileges herein granted shall cease and be of no effect unless three miles of the road is built and in running order within three years from the granting of this charter, and this charter shall not be transferred until at least five miles of said road is completed and ready for rolling stock.

Section 10. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby [fol. 6] repealed.

Approved August 16, 1889.

(2) By certificate of the Secretary of the State of Georgia issued the 28th day of May 1900 the name of Collins Park & Belt Railroad Company was duly changed to "Atlanta Rapid Transit Company." Certificate of the Secretary of State is as follows:

"STATE of GEORGIA,
Office of Secretary of State,
Atlanta:

To whom it may concern, Greeting:

Whereas, the Collins Park and Belt Railroad Company, a corporation created and existing under the laws of this State, has filed in this office, in terms of the law, a petition asking that its charter be amended by changing its corporate name from Collins Park and Belt Railroad Company, to Atlanta Rapid Transit Company, and has complied with all the requirements of the law in such cases made and provided:

Therefore, The State of Georgia hereby amends the Charter of the said Collins Park and Belt Railroad Company by changing its corporate name from Collins Park and Belt Railroad Company to Atlanta Rapid Transit Company.

Witness my hand and the seal of this State, this twenty eighth day of May, 1900.

Philip Cook, Secretary of State."

(3) On the 4th day of September 1899 the City of Decatur granted a permit to Collins Park and Belt Railroad Company set out as exhibit "A" to the petition as follows:

"Atlanta, Ga., August 26th, 1899.

To the Honorable Mayor and General Council of the City of Decatur, Georgia.

[fol. 7] The Collins Park and Belt Railroad Company respectfully petitions your Honorable Body to grant to it the right and franchise to construct, electrically equip and operate the following lines of street car tracks over and upon the following streets of the City of Decatur:

Commencing at the City Limits on Decatur Street, i. e., the street running along the north side of the Georgia Rail-

road and extending along said street east as far as Candler Street or the next street east of and parallel to Candler Street; thence along Candler Street or said next street east of and parallel to Candler Street to Sycamore Street; thence west along Sycamore Street to McDonough Street; thence along McDonough Street to a connection with said line petitioned for on Decatur Street or road, with the right to make such sidings and turnouts as may be necessary.

And petitioners will ever pray.

Collins Park and Belt Railroad Company, by C. J. Simmons, President.

September 4th, 1899.

The following ordinance was read by councilman Pattillo, to wit:

Be it ordained, that from and after the passage of this Ordinance, that Franchise be granted the Collins Park & Belt Railroad Company, to build, electrically equip and operate an electric street railroad in the Town of Decatur from the western town limits on North Railroad Avenue to Oak Street, thence along Oak Street to Broad Street; thence along Broad Street to East Court Square; thence along East Court Street or square to South Court Street or Square; thence along outh Court Street or Square to McDonough Street; thence along McDonough Street, to North Railroad Avenue, or to leave North Railroad Avenue [fol. 8] at McDonough Street; thence direct along McDonough Street to Court Square; thence east along South Court Square to East Court Square; thence North along East Court Square to Broad Street, or to build, electrically equip and operate an electric street railroad on any of the above named streets. Wherever this route runs along streets already occupied by the track of the Atlanta Railway Company the said track shall be removed and replaced by the Collins Park & Belt Railroad Company and at the latters expense so that the tracks of the two companies shall be as nearly as possible equally distant from the sidewalks except at corners.

The tracks of the Collins Park & Belt Railroad Company shall be laid on the south side of Broad Street and west

side of McDonough Street from the tracks of the Atlanta Railway Company. The Streets shall be left in as good condition except for the tracks as before the tracks were laid, and the tearing up and replacing the streets shall be done under the supervision of the Street Committee. The Town of Decatur reserves the right to regulate the speed of cars and the right to make all such regulations as pertain to police power of Decatur. All overhead and other construction shall be done in a reasonably safe manner and the street committe- shall see to this, and all matters pertaining to grades shall be subject to the approval of the street committee.

This is the line in question in this suit.

(4) By certificate of the Secretary of the State of Georgia issued the 28th day of January, 1902 the Georgia Railway & Electric Company was incorporated. The petition for incorporation and certificate is attached as follows:

"GEORGIA,
Fulton County:

To the Secretary of State of the State of Georgia:

[fol. 9] The petition of H. M. Atkinson, P. S. Arkwright, R. E. Cullinane, S. J. Bradley, M. B. Lipscomb, F. M. Sick, G. W. Brine, J. G. Rossman, J. R. Hunter and W. B. Stovall, all of Atlanta, Georgia, shows that they desire for themselves, their associates, successors and assigns, to be incorporated as a street and suburban railway company, under the name of the Georgia Railway & Electric Company. The length of said road will be about one hundred and forty miles, as near as can be estimated. The general direction of same is to be through the streets of the city of Atlanta, and upon the public roads and private rights of way of said company in the counties of Fulton and DeKalb; also through the town of Edgewood, Decatur, East Point, Oakland City, in said counties, with the right hereafter to extend its lines to, in and through the City of Marietta and the county of Cobb, and such other towns of said counties as said Railway Company may desire.

Said corporation desires power to purchase and own existing lines, or to construct their own lines, upon the fol-

lowing streets in the following named places: in the City of Atlanta, upon Edgewood, Piedmont, Highland, Angier, Euclid, Moreland and Ponce de Leon Avenues; Peachtree, Decatur, Marietta, Elizabeth, Hurt, Boulevard, Jackson, Pryor, Houston, Hilliard, Courtland, Pine, Fourteenth, Tenth, Broad, Luckie, Spring, Powers, West Peachtree, Linden, Gray, Simpson, Lambert, Mitchell, Nelson, Tatnall, East and West Hunter, Walker, Peters, Leonard, Ella, Ashby, Gordon, Alabama, Park, Lee, Smith, Crumley, Pulliam, Clark, Washington and Ormond Streets; Ridge, Georgia, Cherokee, Woodward, Capitol, Central, Park, West End, Lucile, Lake Jones, Madison and Trinity Avenues; Waverly Place, Fair, Frazer, Forsyth, Church, Burns, South Boulevard, Grant, Cain, Orme, Mills, Gallatin, Ellis, Irwin, Sampson, McLendon, Cooper, Richardson, McDaniel, [fol. 10] Glenn, Davis, Magnolia, Chestnut, Haynes, Chapel, Clarke, Kellet, Hill, Rock, Elliott, Walton, Alexander, Kennedy, Howell, Ivy, Juniper, Bass and Crew Streets; Atlanta, Hemphill, Dood, Augusta, Greens Ferry, Oglethorpe, Glynwood, Hendricks, Auburn, North and Forrest Avenues.

In the Town of Decatur: North Railroad Avenue, Court Streets or Square, Oak, Broad, McDonough, Ansley, Haddock, Atlanta and Depot Streets.

In the Town of Edgewood: On McLendon Street and Decatur Road.

In Oakland City: Through Forrest Park and through Oakland City to a point opposite the McPherson Barracks, and in Oakland City and East Point along the East Point Public road.

The said right to build and construct, own or operate to apply to any part or all of said streets or parts thereof in the discretion of said Company, and the said Company to have the right to construct, own, build, purchase, and operate its lines of railway upon the public roads of said three counties hereinabove named, and upon any and all other streets and parts of streets in said City of Atlanta, or other towns and cities in said three counties; the purpose being to purchase and acquire, or build and construct, and maintain and operate, a complete system of street and suburban railroads for the purpose of transporting persons and property in the cities and town of Atlanta, De-

catur, Edgewood, East Point, Oakland City and in the Counties of Fulton and DeKalb, with the right of extension as aforesaid, and to connect the various towns and various points in said counties with each other, and with such other points to which the same may be from time to time extended. They desire power also to purchase and own, construct or build, and maintain—and operate, any of their [fol. 11] lines, or of their works, power houses and necessary structures, upon private lands or rights of way, and the same to acquire by purchase or contract, or by the exercise of the right of eminent domain and condemnation.

They desire also the power to own and operate electric plants, and furnish electric light and power; (also to own and operate steam heating plants) and to buy, own, hold and use property necessary or convenient to the exercise of such powers and all others that it may possess, and to have all the powers in these respects specified by the laws of the State of Georgia, and particularly those in respect to electric railroad companies, together with the right to use and occupy the streets, roads and avenue and public places in the cities, towns and counties where they may operate, or to condemn property for the purpose of erecting and maintaining their said lines for the transmission of said light, heat and power, subject to the provisions in regard to such use or condemnation as are provided in the law for the incorporation of railroads.

The Capital stock of said corporation shall be three million dollars, of which at least three hundred thousand dollars may be preferred stock, with the right to increase the amount of either said preferred or common stock, or both, in the manner provided by law for the increase of capital stock of railroads; the terms and limitations thereof, and the rights and privileges of such preferred stock over the common to be such as are fixed in the resolution authorizing the issue of such preferred stock, and said corporation may, if it sees fit, make classes of such preferred stock. Said corporation may retire or decrease said capital stock to any extent not less than the minimum herein prescribed.

The place where the principal office of said corporation is to be located will be the City of Atlanta, Georgia.

The terms of existence of said corporation, and of the [fol. 12] continuance of its rights, powers and privileges shall be one hundred and one years, with the right of renewal and continuance thereafter as may be provided by law. Said corporation may at any time, during its existence, however, by a majority vote of its entire stock, wind up its business, dissolve and surrender its charter. Said corporation shall also have the right to sell, dispose of, assign, transfer and convey all or any part of its property, privileges and franchises at any time when authorized by a majority vote of its stockholders.

Petitioners intend in good faith to go forward without delay to secure subscriptions to the Capital Stock, acquire or construct, equip, maintain and operate said railroads. They request to be incorporated under the laws of this State applicable to the incorporation of street and suburban railroads, with all the powers specified in the Code of Georgia providing for the incorporation of railroads as contained in Section 2165 to 2179 inclusive of the Civil Code of 1895, together with such additional powers as are conferred specially upon electric street railroads, as contained in sections 2181 and 2184 inclusive of said Civil Code of 1895. The corporation to be formed will have the right to apply for and accept by a majority vote of its shareholders any additional powers or amendments to its charter, whether fundamental or immaterial; and whether conferred; or to be acquired under general laws or special acts.

They have given four weeks' notice of their intention to apply for this charter, by the publication of this petition in the newspapers in which the sheriffs' advertisements are published in each of the counties of Fulton, De Kalb and Cobb, once a week for four weeks before the filing hereof.

H. M. Atkinson, P. S. Arkwright, S. J. Bradley, M. B. Lipscomb, F. M. Sisk, J. G. Rossman, G. W. Brine, R. E. Cullinane, W. B. Stovall, J. R. Hunter.

[fol. 13] STATE OF GEORGIA:

Office of Secretary of State, Atlanta, Ga.

To all to whom these presents may come, Greeting:

Whereas, In pursuance of an Act of the General Assembly of the State of Georgia, approved December 17th, 1892, and

Acts amendatory thereof, H. M. Atkinson, P. S. Arkwright, R. E. Cullinane, S. J. Bradley, M. B. Lipscomb, F. M. Sisk, G. W. Brine, J. G. Rossman, J. R. Hunter and W. B. Stovall, all of Atlanta, Fulton County, Georgia, having filed in the Office of Secretary of State, a certain petition seeking the formation of a corporation to be known as Georgia Railway & Electric Company, with its principal office in Atlanta, Georgia, with a capital stock of Three Million Dollars ($3,000,000) of which at least Three Hundred Thousand Dollars may be preferred stock, with the right to increase either common or preferred stock, or both, as provided by law, for the purpose of purchasing, owning, constructing, equipping, maintaining and operating a Street and suburban railroad within the City of Atlanta, Georgia, and to and from said City to diverse points within the Counties of Fulton and De Kalb, in said State, (with the right hereafter to extend according to law, its lines, as stated in the petition for incorporation) along the routes indicated in the application for this certificate, a copy of which said application is hereto attached and made a part hereof; said corporation to be chartered for the term of One Hundred and One years and to have, exercise and enjoy all the rights, powers and privileges incident to corporations of such character under the laws of this State; especially the powers and privileges of transporting persons and property over its Street and Suburban lines and to charge for the carriage thereof; and also to purchase and own, build, maintain [fol. 14] and operate electric light and power plants and to furnish and sell electric light and electric power, and having complied with the statutes in such cases made and provided:

Therefore, the State of Georgia hereby grants unto the above named persons, their successors and assigns, full authority by and under the said name of Georgia Railway and Electric Company to exercise the powers and privileges of a corporation for the purpose above stated, subject to the provisions of Article Four (4) of the Constitution of this State, and all the laws governing railroad companies of force at the date of this certificate or that may hereafter become of force, either by constitutional or statute law, or by any rules and regulations of the Railroad Commission of this State, or otherwise, which govern and control the operation of railroads in this State.

In witness*eth* whereof, these presents have been signed by the Secretary of State, and to which is annexed the Great Seal of the State, at Atlanta, Georgia, this 28th day of January, 1902.

Philip Cook, Secretary of State.

(5) By deed dated March 28th, 1902 the Atlanta Rapid Transit Company conveyed all of its property, together with its different lines of railway to the Georgia Railway & Electric Company.

(6) "An ordinance granting the right to the Georgia Railway & Electric Company to remove and to discontinue the operation of the tracks and structures formerly known as the Atlanta Railway Company in the Town of Decatur, Georgia, under certain conditions and restrictions in said ordinance set forth.

Whereas, the said Georgia Railway and Electric Company, which has succeeded to all the property rights and [fol. 15] franchises of said Atlanta Railway Company, did heretofore commence to tear up the tracks and other structures formerly known as the Atlanta Railway Company in the said Town of Decatur, with the intention of discontinuing the operation of said line of railway.

And, Whereas, said Georgia Railway & Electric Company was prevented from removing said structures, and from discontinuing the operation of said line of railway by a temporary restraining order granted by the Judge of the Superior Court of Fulton County upon the petition of said Town of Decatur against said Georgia Railway & Electric Company, which said petition is now pending in said court, and returnable to the March Term, 1903;

And, Whereas, the President, Vice-President and Manager of said Georgia Railway & Electric Company have appeared before the Mayor and Council of said Town of Decatur on several occasions, and urgently requested that said Georgia Railway & Electric Company be allowed by said Mayor and Council to take up and discontinue the operation of said Atlanta Railway line, urging as a reason for such action by said Mayor and Council that, if allowed to take up and discontinue said line known formerly as Atlanta Railway Company, said Georgia Railway & Electric Company could and would give to the citizens of said Town of De-

catur better street car facilities upon another parallel line of street railway between the City of Atlanta and the Town of Decatur owned by said Georgia Railway & Electric Company, and formerly known as the Atlanta Rapid Transit line, the same being the line of street railway running from Atlanta to Decatur along the Georgia Railroad and immediately north thereof.

Now, therefore, be it ordained by said Mayor and Council, and it is hereby ordained by said authority that the authority, right, permission and consent are hereby granted to said Georgia Railway and Electric Company to discon- [fol. 16] tinue the operation of, abandon and remove the tracks, poles and other structures constituting the street railway line referred to and known as the line of the Atlanta Railway Company in the Town of Decatur, extending along and over the following route in said Town of Decatur, to wit:

Entering said town on the western side thereof at what is known as Swanton' Hill, and running thence in a northeasterly direction until it strikes what is known as Electric Avenue; thence along said Electric Avenue in a northerly direction to Atlanta Street; thence along Atlanta Street in an easterly direction to South Court Square, which is a continuation of Atlanta Street; thence along said South Court square to McDonough Street; thence south along McDonough Street to Depot or Herring Street; thence in a southeasterly direction along Depot or Herring Street to North Railroad Avenue; thence east along said North Railroad Avenue to the eastern limit of said town, and continuing east a short distance beyond said town limit; thence turning north, and running north about the distance of two blocks, thence turning west, and running west until it again strikes the eastern limit of said town where said limit crosses Broad Street; and thence continuing west along said Broad Street in said town to the North Court Square, which is a continuation of said Broad Street; thence continuing west along said North Court Square to West Court Square; thence along West Court Square to South Court Square, where said line connects with the same line described as entering said town, forming a loop; upon the conditions and restrictions hereinafter specified.

Section 2. Be it further ordained, that in consideration of the above-mentioned rights granted by said town to said

Georgia Railway & Electric Company, and in consideration of the benefits that said Georgia Railway & Electric Company will derive from discontinuing and taking up the [fol. 17] structures comprising said Atlanta Railway Company, the said authority, rights, and privileges above referred to are granted and conferred only upon conditions that this ordinance shall first be accepted by said Georgia Railway & Electric Company and that said Georgia Railway & Electric Company, its successors and assigns, whether by contract, or by operation of law, shall be bound to do the following things, to wit:

First. Upon the removal of the tracks and structures above referred to, to restore the surface of those streets from which such tracks and structures shall be removed to as good condition as the same are now in.

Second. To never charge more than five cents for one fare, upon its main Decatur line, above referred to as the Rapid Transit line, for one passenger, and one trip upon its regular cars from the terminus of said line in the City of Atlanta to the terminus of the same in the Town of Decatur, or from the terminus of said line in the Town of Decatur to the terminus of the same in the City of Atlanta and the trip either way shall include the entire loop in the Town of Decatur, hereinafter described, though a greater fare may be charged when passengers are transported between the hours of 12 o'clock midnight and five o'clock A. M.; the said Rapid Transit line above referred to having the following route, to wit: Commencing in the City of Atlanta at the intersection of Peachtree Street and Edgewood Avenue and running thence in an easterly direction along Edgewood Avenue to Hurt Street; thence in a southerly direction along Hurt Street to Decatur Street; thence along Decatur Street, which is immediately north of the Georgia Railroad, in an easterly direction to a point where said street is intersected by the line between the Counties of Fulton and De Kalb, thence continuing in the [fol. 18] same general direction, immediately north of said Georgia Railroad until it intersects the Western limit of said town of Decatur where it crosses North Railroad Avenue; thence continuing in the same direction in the Town of Decatur along said North Railroad Avenue to North Candler Street, thence along North Candler Street north

to a short distance to a continuation of said North Railroad Avenue, thence in an easterly direction along said continuation of said North Railroad Avenue to Oak Street, thence north along said Oak Street to Broad Street, thence west along said Broad Street to East Court Square; thence south along east Court Square to South Court Square, thence west along said South Court Square to McDonough Street, thence south along said McDonough Street to said North Railroad Avenue, there connecting with said line a short distance from where it enters said Town of Decatur coming from Atlanta and forming a complete loop within the Town of Decatur.

Third. To grant one transfer ticket upon the payment of one full fare for the purpose of giving one continuous ride from any point within the Town of Decatur upon said Rapid Transit line to any point within the City of Atlanta on any of its lines in said City, and vice versa, which does not result however in carrying the passenger on a parallel line, or in the same general direction from which he came, provided such transfer is requested at the time of the payment of the fare; and provided the passenger shall abide by such reasonable rules and regulations as the Company may make, so as to limit the time in which such transfer is used, in order that it may be available only for the first connecting car, and in order to cover such other matters as the Company may deem necessary or proper to protect the Company from imposition, abuse, or assignment of such transfer, and to avoid liability in damages from mistakes that may be made by the passengers or the em-
[fol. 19] ployees in regard to such transfers.

Fourth. To gradually from time to time, as it may obtain permission so to do and may have funds available for such purpose, double track said Rapid Transit line from terminus to terminus, the loop already described in the Town of Decatur being considered a double track; provided the time within which said double track shall be completed does not exceed five years, in the event it can obtain permission to construct said double track, which said double track, when completed shall be maintained in a substantial safe and expeditious manner and shall be operated with cars and rolling stock kept in a safe and comfortable condition. Permission to construct said double track in the Town of Decatur is hereby granted.

Be it further ordained that the terms of this ordinance shall be accepted by said Georgia Railway and Electric Company at a meeting of its Board of Directors, so that the same may appear upon the minutes of said Board of Directors, within thirty days from the passage thereof, and the terms of this ordinance shall not be effective until so accepted, and an agreement embodying the terms hereof shall have been entered into by the said Town of Decatur and said Georgia Railway & Electric Company, executed by the Mayor and *and* Clerk of said Town, on the part of said Town, and by the President and Secretary of said Company, or by such officers of said Company as under its charter are authorized to execute deeds to realty, which agreement shall in addition to the above terms, reconvey to said Town any rights, grants or franchises that said Georgia Railway & Electric Company may have acquired within said Town of Decatur as successor to the rights, grants and franchises of the said Atlanta Railway Company acquired from said Town of Decatur.

[fol. 20] Section 3. Be it further ordained that all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Be it resolved by the Board of Directors of the Georgia Railway & Electric Company that the ordinance adopted by the Mayor and Council of the Town of Decatur, on March 3rd, 1903, conferring the right and authority upon this Company to discontinue the operation of, abandon and remove the tracks and poles and other structures constituting the street railway line known as the Atlanta Railway Line, in said Town of Decatur, and covering the route described in said ordinance, be and the same is hereby accepted upon the terms set forth in said ordinance; and the terms and conditions set forth in said ordinance to be approved by this Company are hereby agreed to by it in consideration of the right to remove said line conferred by said ordinance.

Be it further resolved that the President and Secretary of this company are hereby authorized to sign and enter into with said Town of Decatur in the name of one half of this Company, an agreement embodying the terms of said ordinance in accordance with the requirements of said ordinance.

This agreement, made this 1st day of April, 1903, by and between the Town of Decatur, a municipal corporation in the County of De Kalb, State of Georgia, acting by and through its mayor and council, party of the first part, and the Georgia Railway & Electric Company, a corporation under the laws of Georgia, with its principal office in the County of Fulton, party of the second part, witnesseth, that,

Whereas, the mayor and council of said Town of Decatur did on March 3rd, 1903, adopt an ordinance, a copy of which is hereto attached and made a part hereof:

And, whereas, the terms of said ordinance were accepted [fol. 21] by said Georgia Railway & Electric Company at a meeting of its Board of Directors held on March 31, 1903, a copy of the resolution adopted by said Board of Directors being hereto attached and made a part hereof.

Therefore, in accordance with the provisions of said ordinance and in consideration of the mutual covenants and agreements herein contained, the parties hereto contract and agree with each other as follows:

1. Party of the first part hereby confers the authority, right, permission and consent of said Georgia Railway & Electric Company and contracts and agrees that said Company shall be allowed and permitted to at once discontinue the operation of, abandon and remove the tracks, poles and other structures constituting the street railway line, known as the line of the Atlanta Railway Company in the Town of Decatur and extending along and over the route in said Town of Decatur and specified in said ordinance.

2. The said Town of Decatur further agrees to do and perform all things provided to be done or performed on its part by the ordinance hereinbefore referred to.

3. In consideration of the benefit of said party of the second part from discontinuance, abandonment and removal of the said line of Railway hereinbefore referred to, and in further consideration of the benefits to be derived by it from the performance on the part of the Town of Decatur of the provisions undertaken to be performed by it under said ordinance, said party of the second part hereby contracts and agrees with the said Town of Decatur that it (the said Georgia Railway & Electric Company)

will, upon its part, do and perform all things specified in said ordinance to be done and performed by it, and will keep and observe the conditions and terms of the said ordinance.

4. Said Georgia Railway & Electric Company further hereby surrenders to said Town of Decatur the franchise [fol. 22] formerly belonging to the Atlanta Railway Company, in said Town of Decatur, and conveys and quitclaims to the said Town of Decatur all right, title or interest which the said Georgia Railway & Electric Company has or may have had in and to the said franchise owned by the Atlanta Railway Company, in the said Town of Decatur.

In witness whereof, the parties hereto have hereunto set their hands and seals on the day and year hereinabove written as the date hereof; the Town of Decatur acting by and through its Mayor and Clerk, and the Georgia Railway & Electric Company acting by and through its President, and Secretary, all hereunto authorized, executed in duplicate.

Town of Decatur (Seal), by J. W. Mayson, Mayor. L. J. Steele, Clerk. (Seal of Town of Decatur.) Georgia Railway & Electric Company (Seal), by P. S. Arkwright, President, Thos. K. Glenn, Secretary. (Seal of Georgia Railway & Electric Co.)

Signed, sealed and delivered as to Town of Decatur, in De Kalb County, Georgia, in the presence of Ben E. Ragsdale.

W. M. Ragsdale, Ordinary.

Signed, sealed and delivered as to Georgia Ry. & Elec. Co. in the County of Fulton, State of Georgia, in the presence of L. P. Pairo.

R. E. Cullinane, Notary Public, Fulton Co., Ga.

(The same as set out in Exhibit B of the petition.)

[fol. 23] (7) The Georgia Railway & Power Company was chartered under the laws of the State of Georgia under certificate issued by the Secretary of the State of Georgia dated the 16th day of October 1911. A copy of the petition and the certificate of incorporation being as follows:

"To the Secretary of *the* State of the State of Georgia:

The petition of Charles Magee, of Toronto, Canada, John M. McWhinney, of Toronto, Canada, George A. Kingston, of Toronto, Canada, Jack J. Spalding of Fulton County, Georgia, Forrest Adair of the City of Atlanta, Georgia, Alex C. King, of the City of Atlanta, Georgia, E. Marvin Underwood, of the City of Atlanta, Georgia, Hughes Spalding of Fulton County, Georgia, George W. Adair of the City of Atlanta, Georgia, shows that their residences are as stated above, that they desire for themselves, their associates, successors and assigns and all persons who may become stockholders in such company, to be incorporated for a period of one hundred and one year with the privilege of renewal, as a suburban, interurban and street railroad company under the name of Georgia Railway and Power Company.

The length of said road will be about two hundred miles as near as can be estimated.

The general direction of said road will be from the Town of Stone Mountain, De Kalb County, Georgia, in a generally westwardly direction through the town of Clarkston, and to and into the Town of Decatur, all in De Kalb County, Georgia, also in, upon or through the streets of the cities and Towns of Decatur, East Lake, Lakeview, Oakhurst, Kirkwood, and Atlanta in the County of DeKalb, State of Georgia, and of Atlanta, East Point, College Park and Hapeville in the County of Fulton, State of Georgia, and upon public roads and private rights of way in the said cities and towns and in the said counties of DeKalb and [fol. 24] Fulton in the State of Georgia, and in the territory contiguous to the said counties of DeKalb and Fulton, with the right hereafter to extend its lines and construct and acquire additional lines of street, suburban and interurban railways to, in and through such other cities, towns and counties as said railway company may desire, it being the purpose of said company to hereafter construct and operate such additional lines.

The Counties through which said road will probably run are the Counties of DeKalk and Fulton.

The names of the principal places from which and to which the said road is to be constructed are the cities and towns of Stone Mountain, Clarkston, Decatur, Kirkwood,

Oakhurst, Lakeview and East Lake, in the County of De Kalb, State of Georgia, and of Atlanta, East Point, Hapeville, College Park in the County of Fulton, State of Georgia and various other places and points in the Counties of De Kalb and Fulton.

The said company proposes to construct and build or purchase, lease and acquire lines of street and suburban railroad with their franchises in the cities and towns of Stone Mountain, Clarkston, Decatur, East Lake, Lakeview, Oakhurst, Kirkwood and Atlanta in the County of DeKalb, and of Atlanta, East Point, College Park, and Hapeville in the County of Fulton, and in the following streets of said cities and towns, namely:

In the Town of Stone Mountain: On Main Street and private rights of way.

In the Town of Clarkston: On Main Street and or Roland Avenue and or other streets names unknown, and private rights of way.

In the Town of Decatur: Along Railroad Avenue, Decatur Public Road, Oak Street, Ponce de Leon Avenue, Court House Square, McDonough Street, College Avenue, Cand-
[fol. 25] ler Street, Ansley Street, Haddock Street, Sycamore Street, Covington Road and private rights of way.

In the Town of East Lake: Morgan Avenue and private right of way.

In the Town of Lakeview: Private rights of way.

In the Town of Oakhurst: Along Railroad Avenue, De Kalb Avenue, Decatur Public Road, private rights of way.

In the Town of Kirkwood: Along Railroad Avenue or DeKalb Avenue, Decatur Public Road, Boulevard DeKalb, private right of way.

In the City of Atlanta: On Decatur, Ivy, Gilmer, Hurt, Elizabeth, McLendon, North and South Boulevard, Jackson, Butler, North and South Pryor, Houston, Hilliard, Irwin, Sampson, Courtland, Juniper, Twelfth, Thirteenth, Pine, Tenth, Fourteenth, Peachtree, West Peachtree, Marietta, Brady, Walton, North and South Broad, North and South Forsyth, Spring, Luckie, Hunnicutt, Plum, Carnegia Way, West Cain, Orme, Mills, Whitehall, Park, Lee, Gordon, Capitol Square, East and West Mitchell, Davis, Magnolia, Gray, Kennedy, Simpson, Ashby, Elliott, Rock, Lambert, Alabama, East and West Hunter, Nelson, Chappel, East and West Fair, Chestnut, Walker, Peters, Leonard,

Ella, Tatnall, Adamsville Road, Cooper, Richardson, McDaniel, North and South Pryor, McDonough Road, Bass, Pulliam, Ormond, Washington, Jefferson, Crew, Estoria, Flat Shoals, Kelly, Grant, Frazier, Hill, Berne Streets; Piedmont, Edgewood, DeKalb, Euclid, Moreland, Auburn, Highland, Lake, North, Forrest, Angier, Ponce de Leon, Hemphill, Stewart, Jones, English, Bellwood, Madison, Greensferry, West End, Lucille, Georgia, Ridge, Central, Dodd, Weyman, Milton, Lakewood, Trinity, South and North Moreland, Delaware, Underwood, Capitol, Woodward, Glenwood, Augusta, Cherokee, Park and Confederate Avenues, East Point, Chert Road, private rights of way, Adamsville Road, McDonough Road, Flat Shoals Road.

[fol. 26] In the City of East Point: Along the street known as College Park and East Point Road or Main Street.

In the City of College Park: Along College Park and East Point or Main Street.

In the Town of Hapeville: Along Central Avenue, East Point and Hapeville Road, Atlanta Avenue, College Street.

The said company desires the power to purchase, lease, acquire, build, construct, own, maintain and operate the street, suburban and interurban railways above described for the purpose of transporting passengers and property, together with the right of extending the same, and constructing and acquiring other lines of street, suburban and interurban railways, to any other point or points, over any route or routes in the cities and towns above referred to or other cities and towns, and in the said Counties of DeKalb and Fulton, or in the territory adjacent thereto or elsewhere.

The said power to purchase, lease, acquire, build, construct, own, hold, maintain and operate street, suburban and interurban railroads with their franchises to apply to any part or all of the streets, avenues and public places above named in the cities and towns or any parts thereof in the discretion of the said company, and to any and all other streets, avenues, public places and private rights of way in the said cities and towns of Atlanta, East Point, College Park, Hapeville, Kirkwood, Oakhurst, Lakeview, East Lake, Decatur, Clarkston, and Stone Mountain, and to any and all other public roads, private rights of way

in the said counties of Fulton and DeKalb, the consent to occupy which may be granted by the proper public authorities, the purpose being to purchase, lease, acquire, build, construct, own, hold, maintain and operate a complete system of street, suburban and interurban railroads for the [fol. 27] purpose of transporting persons and property in the cities of Stone Mountain, Clarkston, Decatur, East Lake, Lakeview, Oakhurst, Kirkwood, Atlanta, East Point, College Park and Hapeville, and in the Counties of DeKalb and Fulton with the right of extension as aforesaid, and connect the said various towns and cities and various points in said cities and towns and in the said counties with each other and with such other points within or without the said cities and towns and within or without the said counties to which the said road may be from time to time extended.

The said company also desires the power to purchase, lease, acquire, build, construct, own, hold, maintain and operate any part or all of its lines, tracks, structures, works, power houses upon private lands or rights of way and the same to acquire by purchase or contract or by the exercise of the right of eminent domain and condemnation.

The said company also desires the power to purchase, lease, acquire, build, construct, hold and operate electric plants and properties, hydro-electric plants and properties, steam plants and properties or other plants and properties for the generation, transmission and distribution of power and electric current, with the easements and franchises appertaining thereto, and to furnish power, electric current, light and heat for any purposes for which same may be employed.

The said company also desires the power to purchase, lease, build, construct, own, hold, maintain and operate steam heating and power plants and to furnish steam for heating and power plants and to furnish steam for heating and power purposes.

The said company desires the power to purchase, lease, acquire, own, hold and use the property necessary or convenient to the exercise of all powers that it may possess and that it shall have all the power in these respects [fol. 28] specified by the laws of the State of Georgia and particularly those with respect to street, interurban and suburban railroad companies, electric railroad companies

and companies creating electricity, together with the right to use and occupy the streets, roads, avenues and public places in the cities, towns and counties where it may operate or where any of its plants, works, railroads, lines, transmission li-es and systems or distributing lines and systems may be located, also the power to condemn property, rights and easements for the purpose of contracting and operating railways, works and lines, water power plants and properties, electric plants and properties, steam plants and properties, and erecting, constructing and maintaining the lines, pipes and systems for the transmission and distribution of electricity, light, heat and power and steam heat and steam power.

The capital stock of said company shall be twenty-seven million dollars, of which fifteen million dollars shall be common stock, two million dollars shall be six per cent cumulative first preferred stock and ten million dollars shall be four per cent non-cumulative second preferred stock.

The said first preferred stock is to be paid such six per cent dividends annually before any other stock receives any dividend. Deficiencies in preceding years to be made good out of profits in succeeding years before the other stock receives any dividend. It is to be paid no further dividend. On dissolution of said company it is to be paid its par value before other shares receive any payment. It will have no voting power and may be retired at any time in such manner as the company prescribes in issuing the same.

The second preferred stock shall be preferred over the common stock only to the extent of receiving four per cent [fol. 29] non-cumulative dividends annually before such common stock receives any dividend. Its preference ceases whenever it and the common stock have received as much as four per cent per annum for three consecutive years, when it becomes common stock. It shall participate with the common stock in all dividends above four per cent. After such per cent has been paid on both classes. It shall have like voting power, and rights in other respects with the common stock.

The said company desires the right, power and privilege to change the capital stock in the manner provided by law for changing the capital stock of railways.

The place where the principal office of the said company is to be located will be in the City of Atlanta, County of Fulton, State of Georgia, with the right and power to establish other offices, works, plants and properties, to own, maintain and operate the same at such other place or places within or without the State of Georgia as the said Company may from time to time desire.

The said company may at any time during its existence by a vote of a majority in amount of the voting capital stock then outstanding, wind up its business, dissolve and surrender its charter or any portion of its franchises.

Petitioners intend in good faith to go forward without delay to secure the necessary subscription to the capital stock to acquire or construct, equip, maintain and operate said railroad. They request to be incorporated under the laws of this State applicable to the incorporation of street and suburban railways, with all the powers specified in the Code of Georgia, providing for the incorporation of railroads, together with such additional powers as are conferred especially upon street and suburban railroads, electric railroad companies, water power companies and companies creating electricity. The company to be formed [fol. 30] shall have the right to apply for and accept by vote of a majority in amount of its voting capital stock at the time outstanding any additional powers or amendments to its charter, whether fundamental or immaterial, and whether conferred or to be acquired under general laws or special acts.

Petitioners have given four weeks' notice of their intention to apply for this charter by the publication of this petition in one of the newspapers in which the sheriffs advertisements are published in each of the counties through which the said proposed road will probably run, namely, the Counties of Fulton and DeKalb in the State of Georgia, once a week for four consecutive weeks before the filing of this petition.

Jack J. Spalding, Alex C. King, E. Marvin Underwood, Forrest Adair, G. W. Adair, Hughes Spalding, Charles Magee, J. M. McWhinney, R. Mathison, Geo. A. Kingston.

Witness: E. Y. B. Pennefather.
Witness: E. Y. B. Pennefather.

STATE of GEORGIA:

Office of Secretary of State, Atlanta, Ga.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an Act of the General Assembly of the State of Georgia, approved December 17th, 1892, and Acts amendatory thereof, Charles Magee of Toronto, Canada, John M. McWhinney, of Toronto, Canada, George A. Kingstone of Toronto, Canada, Robert Mathison, of Toronto, Canada, Jack J. Spalding of Fulton County, Georgia, Forrest Adair, of the City of Atlanta, [fol. 31] Georgia, Alex C. King, of the City of Atlanta, Georgia, E. Marvin Underwood of the City of Atlanta, Georgia, Hughes Spalding of Fulton County, Georgia, George W. Adair of the City of Atlanta, Georgia, having filed in the office of the Secretary of State a certain petition seeking the formation of a corporation, to be known as Georgia Railway & Power Company, with its principal office in the City of Atlanta, Fulton County, Georgia, with a capital stock of Twenty Seven Million ($27,000,000) Dollars, of which Fifteen Million ($15,000,000) Dollars shall be common stock, Two Million ($2,000,000) Dollars shall be six per cent (6%) cumulative first preferred stock; and Ten Million ($10,000,000) Dollars four (4%) per cent non-cumulative Second preferred stock, the rights and privileges of each class of stock being stated in said petition, for the purpose of constructing, purchasing, leasing, owning, equipping, maintaining and operating the Street, Suburban and Interburban Railroads, from the Town of Stone Mountain, to and through the Towns of Clarkston, Decatur, East Lake, Lakeview, Oakhurst, Kirkwood and Atlanta, all in DeKalb County, Georgia, and Atlanta, East Point, College Park and Hapeville, all in Fulton County, Georgia; and upon the streets, public roads, public places and private rights of way in said cities, towns and counties, with the right hereafter to extend its lines as provided by law, along the routes indicated in the petition for this certificate, a copy of which is hereto attached and made a part hereof; said corporation to be chartered for the term of one hundred and one (101) years, and to have, exercise and enjoy all the rights, powers and privileges in-

cident to corporations of such character under the laws of this State, especially the powers and privileges of transporting persons and property over its said street, suburban and interurban railroads. Also the power to purchase, lease, construct, own and operate electric plants and prop- [fol. 32] erties, hydro-electric plants and properties, steam and other plants and properties for generating electricity and steam heat and with the right to furnish power, light and heat to municipalities, corporations, companies and private citizens, as provided by the laws of Georgia in respect to electric street, suburban and interurban railroad companies and having complied with the statutes in such cases made and provided:

Therefore, the State of Georgia hereby grants unto the above named persons, their successors and assigns, full authority by and under the said name of Georgia Railway & Power Company to exercise the powers and privileges of a corporation for the purpose above stated, subject to the provisions of Article four (4) of the Constitution of this State and all the laws governing railroad companies of force at the date of this certificate or that may hereafter become of force either by constitutional or statute law, or by any rules and regulations of the Railroad Commission of this State, or otherwise which govern and control the operation of railroads in this State.

In witness whereof, these presents have been signed by the Secretary of State, and to which is annexed the Great Seal of the State at Atlanta, Georgia this 16th day of October, 1911.

Phillip Cook, Secretary of State.

(8) On the 1st of January, 1912, the Georgia Railway & Electric Company leased all its property and its different lines of railway to the Georgia Railway & Power Company under an indenture of lease, the material parts of which are as follows, to wit:

This indenture, made the 1st day of January in the year 1912, by and between the Georgia Railway and Electric Company, incorporated under the laws of the State of [fol. 33] Georgia (Hereinafter called the lessor), of the one part, and the Georgia Railway and Power Company, in-

corporated under the laws of the State of Georgia (hereinafter called the lessee), of the other part.

Whereas the lessor has been incorporated under the laws of the State of Georgia with corporate existence for one hundred and one years, expiring on the 28th day of January, 2003, and was duly organized for the purpose, among other things, of owning, maintaining, and operating electric railroads in and about the City of Atlanta in the said State, and now owns such an electric railroad, and is engaged in maintaining and operating the same, and the lessor has an authorized capital of $10,914,600, of which $2,400,000 is represented by $2,400,000 in par value of five per cent. non-cumulative preferred shares, and $8,514,600 is represented by $8,514,600 in par value of common shares, on which dividends have been currently paid at the rate of eight per cent. per annum in quarterly instalments, and the lessor now owns $514,600 in par value of its own common shares, which it acquired by purchase in the open market after the same had been duly issued;

And whereas, the lessor has executed a certain Refunding and Improvement Mortgage with the American Trust Company, as trustee, under date of 1st of January, 1909, for the purpose of securing a total authorized issue of $20,000,000 of its "Refunding and Improvement Mortgage Sinking Fund Gold Coupon Bonds," payable on 1st of January 1949, under which mortgage $7,520,000 of the said bonds were reserved for issue to provide or pay for additions, improvements and additional property as specified in Article 1, Section 10, thereof, and there have been issued under the said article 1, section 10, bonds to the amount of $769,000 of which $519,000 bonds are outstanding, and $250,000 are now in the treasury of the lessor;

[fol. 34] And whereas the said $514,600 of common shares and $250,000 of bonds 5 are available for sale or use for any of the corporate purposes of the lessor, and the residue of the bonds issuable under the said article 1, section 10, to wit $6,751,000 bonds, are issuable for future additions and property at a rate of not exceeding 75 per cent of the actual and fair cost thereof, as provided in the said mortgage:

And whereas the lessor also owns all of the capital stock, to wit $600,000 par value of preferred shares and $1,014,-

625 par value of common shares, of the Atlanta Gas Light Company, a corporation duly organized under the laws of the State of Georgia, with power among other things, to engage in the business of making and distributing gas for lighting and other purposes in the said City of Atlanta, and the said Atlanta Gas Light Company has executed a certain first mortgage with the New York Security and Trust Company (now the New York Trust Company) under date of 1st of June 1897, to secure a total authorized issue of $1,150,000 bonds, dated 1st of June, 1897, payable on the 1st of June, 1947, all of which are now outstanding:

And whereas the lessor also owns all of the capital stock, to wit $100,000 par value of common shares, of the Atlanta Northern Railway Company, a corporation duly organized under the laws of the State of Georgia, with power among other things to own, maintain and operate electric railroads, and the said Atlanta Northern Railway Company now owns an electric railroad running in and from the said City of Atlanta to the City of Marietta, and is engaged in maintaining and operating the said railroad, and the said Atlanta Northern Railway Company has executed a certain first mortgage or deed of trust with the Old Colony Trust Company as trustee, under date of 10th of October, 1904, to secure a total authorized issue of $400,000 bonds, [fol. 35] 1st July, 1904 payable 1st July, 1954, but redeemable on any interest date after 1st July, 1909, at 110, all of which bonds are now outstanding:

And whereas the lessor owns various other shares of other corporations, all of which are to be enumerated in the inventory provided for in Article 37 hereof:

And whereas the lessee has been organized under the laws of the State of Georgia for the purpose, among other things, of owning, maintaining and operating electric railroads and of generating electricity, and with power to take over the premises demised hereby:

And whereas both parties have full legal power and authority to enter into this indenture of lease and to make and fulfil all their respective covenants and agreements herein contained, and desire to do so for the purpose or connecting their respective railroads constructed and to be constructed and of obtaining motive power for the purpose of operating the same, and the execution hereof has been duly and

legally authorized by the shareholders and directors of both parties under the authority granted by the statutes of the State of Georgia,

Now therefore this Indenture witnesseth that the said parties each for itself, its successors and assigns, and each in consideration of the covenants and agreements herein made by the other, have covenanted and agreed, and do hereby covenant and agree, each with the other and its successors and assigns, as follows, to wit;

The lessor doth hereby grant, demise and lease unto the lessee all and singular its railroads, electric power and steam heating plants and systems, lands, franchises, contracts and other property of every description, real and personal now owned or hereafter to be acquired by the lessor, and all its franchises, rights, privileges, easements, permits, licenses and appurtenances thereunto belonging or [fol. 36] otherwise, including the right to demand and receive to the lessee's own use all tolls, rents, revenues, income and profits, but excepting its corporate seal and books of record and account, and its deeds, grants, plats and other instruments and documents containing or constituting the evidence of its rights and title to the property now or hereafter owned or operated by it; and excepting the shares of stock and bonds of other corporation- now or hereafter owned by the lessor, but including all the income derived or receivable from such shares and bonds (all of which are hereinafter referred to as the demised premises).

Provided always that this lease be subject to the several mortgages now existing upon all or any part of the demised premises.

To Have and to Hold the same unto the lessee, its successors and assigns, for the term of 999 years from the 1st of January, 1912.

Lessor's Covenants

1. The lessor covenants that during the continuance of this lease, so far as it lawfully may, it will maintain its corporate organization, and for that purpose will hold all necessary meetings, elect all necessary directors and officers at the expense of the lessee, but not exceeding $5,000 per annum, and will at the request and expense of the lessee make and keep all necessary records, reports, and returns

required by law, and exercise or cause to be exercised all such franchises, and do and perform or cause to be done or performed all such acts, lawful and consistent with its rights hereunder, as shall be proper and necessary for the due protection, preservation and full enjoyment by the lessee of all the demised premises, and the property extension or renewal from time to time of such rights and franchises, and to carry out the true intent and meaning of this instru-
[fol. 37] ment. The lessor covenants that, at the request and expense of the lessee and in due season, it will do all things and cause all things to be done by its shareholders and directors that lawfully can be done to continue, renew and extend its corporate existence from time to time until a time subsequent to the expiration of nine hundred and ninety-nine years from the date hereof.

2. The lessor covenants that the lessee may use the name of the lessor in bringing, prosecuting or defending any suits or proceedings in law or equity which may be necessary or proper, in the opinion of the lessee, for the protection, preservation and full enjoyment by the lessee of all the demised premises, including proceedings for condemnation and the exercise of the right of eminent domain, and may from time to time apply for the acquire in the name or in the right of the lessor further rights to lay and maintain tracks and conduits and to erect and maintain poles, pole lines, piping and wires for said street suburban and interurban railroads, electric light and power and steam heating plants and systems, but the lessee shall save and hold the lessor harmless and indemnified from and against all loss, cost, damage and expense whatsoever arising therefrom.

15. The lessor covenants that it will deliver to the lessee as of the date hereof the sole and exclusive possession of all the demised premises, and also turn over to the lessee for the sole use of the lessee all the cash, bills notes and accounts receivable, and other quick assets belonging to the lessor, except shares of stock and bonds), as well as all supplies, equipment, appliances and other personal property embraced in the demised premises, and that from time to time during the continuance of this lease, as other
[fol. 38] property covered thereby is acquired and come into possession of the lessor, it will transfer and deliver

possession thereof to the lessee; it being agreed by the lessee that the said cash and quick assets are more than sufficient to recompense it for all sums which the lessee is obliged to pay hereunder on account of dividends, taxes, rentals, interest and sinking fund charges of the lessor accrued prior to the date hereof, and of the current debts and liabilities of the lessor.

Lessee's Covenants

16. The lessee covenants that it will pay, satisfy and discharge as the same shall become due and payable all taxes, rates, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description which have been or may be lawfully imposed or assessed during the continuance of this lease in any way upon the lessor or upon the lessee, either with reference to the capital stock or income of the lessor, or to the property, earnings, contracts, rights, privileges or franchises hereby demised, or to the sums of money payable by the lessee hereunder to the shareholders of the lessor or otherwise; and also that it will pay all sums of money which the lessor now may be or hereafter become liable to pay by law, contract or otherwise, for the possession enjoyment or perpetuation of any of its rights, powers, privileges or franchises; said payments to be made as the same become due to the officers or other persons entitled by law to recover the same; and, in the event that the lessee shall fail to make any such payments when the same become due, the lessor may at any time thereafter make such payments and recover the amount thereof with interest thereon from the date of such payments and all costs, attorneys' fees and other expenses from the lessee, without prejudice to any rights secured to the lessor by this lease for breach of any covenants hereof; it being understood and agreed, however, [fol. 39] that, if the lessee shall desire to resist by legal proceedings the payment of any tax or assessment, and shall so notify the lessor and the lessee shall commerce such legal proceedings in good faith, the lessor shall not pay nor shall the lessee be obliged to pay any such tax or assessment until 30 days after the final adjudication thereupon by the court having jurisdiction in such case, and, in the event that the lessee shall take an appeal from any adjudication upon

such tax or assessment, then the lessor shall not pay nor shall the lessee be obliged to pay such tax or assessment until 30 days after final adjudication upon such appeal.

17. The lessee hereby accepts the street suburban and interurban railroads, electric power and steam heating plants and systems and the estate and property, real and personal, hereby demised as the same actually are at the date hereof, and covenants that it will, subject to the provisions of existing and future municipal grants, during the term hereof renew, repair and replace the same, so as to maintain and keep the demised premises in as good order, repair and condition as the same are now and in their present state of efficiency; and that without the consent of the lessor, it will not sell or transfer (except by mortgage or pledge to secure its debts), its power plants, transmission lines or sub-stations, or substantial rights used or useful for or in connection with the creation, generation, transmission or use of power, unless other power plants, transmission lines or sub-stations of equal or greater capacity and usefulness shall be substituted therefor or unless it shall retain the ownership of hydro-electric plants, water-power properties, transmission lines and rights reasonably sufficient to supply all the electric current which can be used or supplied in the territory in which the business of the lessor is or may be [fol. 40] reasonably expected to be conducted, provided that nothing in this paragraph contained shall be constructed to prohibit or prevent an assignment of this lease or the sale of the lessee's properties upon the terms and conditions provided in paragraph 42 hereof; that it will from time to time at its own expense (except so far as the expense thereof may be paid or reimbursed out of stock and bonds of the lessor or otherwise as herein provided) make all extensions, additions, alterations, improvements, renewals and betterments which may be necessary or proper with reference to the demised premises and for the use and operation thereof, and will do and perform all other things necessary to make and maintain said street suburban and interurban railroads, plants and systems as first class, modern and efficient street suburban and interurban railroads, electric power and steam heating plants and systems of capacity sufficient to supply the reasonable demands of the

public within the area prescribed below in this paragraph; and that it will apply for and obtain, so far as it can so do, all renewals of franchises, municipal grants and privileges and all new franchises, grants and privileges that may be necessary for the maintenance and operation of the leased premises and the business of the lessor; and that all lands, structures, improvements, betterments and renewals added to or made upon the demised premises, and all other property of every kind acquired within a distance of seven miles in any direction from the south-west corner of Central Avenue and Wall Street in the City of Atlanta, Georgia, (except power transmission lines, sub-stations and office buildings of the lessee), and all rights, privileges and franchises acquired in connection with or incident or appurtenant to or used or useful or convenient in respect of or in connection with the demised premises or such property [fol. 41] within the said prescribed area, shall be acquired in the name of the lessor, and shall become the property of the lessor and be treated as part of the demised premises and be subject to all the terms, conditions and provisions of this indenture in like manner as if they had been vested in the lessor at the date of this instrument.

21. The lessee covenants that it will insure and keep insured such parts of the leased premises as are of an insurable nature for such sums and in such manner as shall reasonably protect the same against loss or damage by fire and as shall be usual in like properties, and that it will exhibit to the lessor or its agents the policies, whenever reasonably requested, and will apply all sums received by virtue of any such insurance to the rebuilding, replacement or repair of the property damaged or destroyed, whenever necessary or desirable in the judgment of the lessee for the operations of the leased property, or, when not so necessary or desirable, then to extensions, betterments and renewals of the leased property; provided, however, that the lessee may adopt such other plan or method of protection against loss by fire, whether by the establishment of an insurance fund or otherwise, as may be approved by the board of directors of the lessor. It is understood and agreed, however, that the lessee will at all times comply with the insurance clause contained in all mortgages upon the demised premises. In case of any failure on the part of the lessee to keep said property so insured or protected from

loss by fire, it shall be lawful for the lessor to cause said property to be insured, and the lessor may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from the lessee, without prejudice to any rights secured to the lessor by this lease for breach of any covenant thereof.

[fol. 42] 23. The lessee hereby assumes all the contracts and other obligations of the lessor and covenants that it will pay all the indebtedness of the lessor shown by its books and records, and also covenants that it will assume and pay all other debts, obligations and liabilities, both present and future, of the lessor (except the principal of bonds and except any liabilities incurred by the lessor contrary to its covenants herein contained, but including all obligations to pay and provide sinking funds), and all the liabilities of the lessor or injuries or damages to persons or property, and that it will defend, at its own expense, all actions now pending or hereafter brought against the lessor on account of claims for such liabilities, the lessee to be subrogated, however, to the benefit of any contract or undertaking with any person or persons indemnifying or protecting the lessor against such indebtedness and liabilities; and also that it will pay all the interest and sinking fund charges on all bonds of the Atlanta Gas Light Company and of the Atlanta Northern Railway Company, now outstanding or that may hereafter be issued with the consent of the lessee.

24. The lessee covenants that at its own cost and expense it will operate said street suburban and interurban railroads, electric power and steam heating plants and systems and the other leased properties in compliance with the laws of the State of Georgia, and that it will make all returns and do all things that may by law be required in respect of the whole or any part of the demised premises or the business conducted therewith, and that it will furnish all cars, equipment and apparatus of every description necessary for the proper use and operation of said street suburban and interurban railroads and other leased property but, if at any time hereafter the lessee shall find it undesirable or unprofitable to maintain and operate the [fol. 43] steam heating plant of the lessor, it may discontinue the operation and use of the same, subject to any

mortgage obligations of the lessor relating thereto and to the obligations of the municipal grants to the lessor.

26. The lessee further covenants that it will perform all the obligations imposed upon the lessor by law or by the provisions of its grants from or contract with any State, city, town or county, in relation to the demised premises, and not do or suffer to be done or omitted any act or thing which shall be ground for forfeiture of any of the franchises, rights and privileges or easements derived thereunder for the construction and maintenance and operation of said street suburban and interurban railroads, electric power and steam heating plants and systems, or any part thereof, of which the lessee shall at any time be in possession under this lease, or which shall be a breach of any condition or obligation imposed upon the lessor by the mortgages of the lessor, or by any other contract entered into by the lessor; and that the lessee will not suffer, permit or consent to any alterations or changes in any such franchises, rights or privileges without the writen consent of the lessor; and said lessee shall and will hold the lessor harmless from all liability, cost or expense arising during the term hereby created for or upon the bonds, if any, heretofore or hereafter executed to any city, town or county conditioned for the faithful performance of the obligations of the lessor under its grant from or contract with any such city, town or county.

28. The lessee covenants that it will perform and observe all the covenants and agreements of the lessor, including all covenants and agreements with respect to sinking funds, but excepting those as to the payment of principal of bonds so far as the sinking funds are sufficient to pay the same, [fol. 44] contained in its said mortgage to the American Trust Company of Boston, as trustee, dated the first day of January, 1909, securing a total authorized issue of bonds in the sum of $20,000,000; and also all covenants and agreements of the lessor except those as to the payment of the principal of bonds, contained in any mortgage executed pursuant to the provisions hereof.

(9) In February 1927, by virtue of certificate issue by the Secretary of the State of Georgia the following corporations, to wit; Georgia Railway & Electric Company,

Georgia Railway & Power Company, Athens Railway & Electric Company, East Georgia Power Company and the Rome Railway & Light Company were merged and consolidated into a corporation under the name and style of the Georgia Power Company.

(10) An ordinance of the City of Decatur passed May 15, 1925, as follows, to wit:

An Ordinance Providing for Paving of Oak Street and East Ponce De Leon Ave.

Whereas, the Commissioners of the City of Decatur, by virtue of the authority granted them under the charter of said City, have full power and authority, in their discretion, to grade, pave, macadamize, or otherwise improve the travel and drainage of the streets, squares, public lanes and alleys of said city; and

Whereas, it is necessary for the public travel and drainage of said streets that the same should be improved; and

Whereas, it is the judgment of the Commissioners of said City, and by this ordinance they so declare, that the pavement of said streets with 5" Asphaltic Concrete and with granite cubes between the tracks of the street car company and for two (2) feet on each side thereof, and that the granite cubes and ties of the car track be firmly set in a concrete base and the cubes grouted with asphaltic [fol. 45] or cement, accordingly to the specifications and plans of the City Engineer, will properly improve said street for the travel and drainage thereof, and that such improvements are necessary for such travel and drainage; and

Whereas, the Commissioners of the said City as authorized, under the charter of said City, to assess the cost, in full, for the paving between the tracks and for two (2) feet on each side thereof of the Street Railway Company, and to assess the remaining cost of said paving against the real estate abutting on such street; one-half of such remaining cost to be assessed against the real estate abutting on one side of the street and one-half of said remaining cost to be assessed against the real estate abutting on the other side of said street, where paved.

Therefore be it ordained by the Commissioners of the City of Decatur and it is hereby ordained by authority of

the same, that N. Oak St. from E. Howard Ave. to E. Ponce De Leon Ave. and E. Ponce De Leon Ave. from E. Court Square to Sycamore Drive be improved by paving the same with 5" Asphaltic Concrete and with granite cubes between the tracks of the Street Railway Company, and for two (2) feet on each side thereof, and that the granite cubes and ties of the car track be firmly set in a concrete base and the cubes grouted with asphalt or cement.

Be it further ordained, that when said street has been so improved, the City Manager of said city, shall make up an assessment roll of the cost of such improvement, showing the total cost thereof and showing the total cost between the tracks of said Railway Company and for two (2) feet on each side thereof, and showing the remaining cost of such improvement; that is, the cost after deducting from the total cost the cost of paving between said car tracks and for two (2) feet on each side thereof, and showing the num-
[fol. 46] ber of feet of real estate abutting on each side of said streets where paved, and the cost per lineal foot on each side of said streets where paved, as provided by the charter of said city.

Be it further ordained, when the City Manager shall furnish to the Commissioners such assessment roll, they shall adopt an ordinance making an assessment against the Georgia Railway & Power Company for the total cost of the pavement between the tracks of said Company and for two (2) feet on each side thereof; against the real estate abutting on each side of said streets, and against the owners thereof at the time of making said assessment and such remaining cost.

Be it further ordained, that such assessment shall be a lien against said Street Railway Company and against said property from the time of making said assessment, in terms of the charter of said City.

Be it further ordained, that upon adoption of said ordinance making said assessment, the Clerk of the Commissioners shall notify the respective owners of such property, and the Georgia Railway & Power Company, the amount of assessment against their said properties, and he shall give them ten (10) days in which to make payment thereof and after ten (10) days, he shall issue fi. fas. against the property, and the said owners thereof and against the Georgia Railway & Power Company for all assessments

which may be in default as provided by the charter of said city, which fi. fas. shall be turned over to the Marshall of said City for levy and sale, if not paid.

Be it further ordained, that said Clerk shall publish notices of the introduction of this ordinance notifying the public and parties interested by publication in the De Kalb New Era, one time, at least ten (10) days before the adoption of this ordinance, and such notice shall contain a statement of the streets to be improved; the kind of pavement [fol. 47] to be made; the date of the meeting of the Commissioners at which such ordinance will be considered for adoption, and the same may be adopted at such meeting or some subsequent meeting, in the discretion of the Commissioners, and any person interested in such improvement may file his objection to the adoption of such ordinance with the City Clerk and be heard by said Commissioners, if he may desire to appear and be heard.

Be it further ordained, that all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

(11) A letter of July 9th, 1925 from Mr. P. S. Arkwright, President of the Georgia Railway & Power Company to J. S. Looney, City Manager of the Town of Decatur, as follows to wit:

"Dear Mr. Looney: On my return to the City Mr. Butler brought to my attention your notice with reference to the paving of Ponce de Leon Avenue from Oak Street in the City of Decatur.

This Company can neither do this paving itself nor pay for it should the City of Decatur do it. The particular line is being operated at a very considerable loss and has been sustaining such loss over a long period, and the prospects are that it will continue to be operated at a loss as long as it is operated at all.

This additional paving burden which, if enforced against us, would involve us in an expense of from $21,000 to $25,000, is more than the line can bear. Under these circumstances, we would be willing to surrender to the City of Decatur the franchise for this line and remove these tracks from the streets. To this end I have written Mr. L. J. Steele, City Attorney, a letter, copy of which is enclosed.

[fol. 48] I respectfully request that some way be found not to enforce this paving charge against us, as of course we would rather not surrender the franchise if it can be avoided.

Yours very truly, P. S. Arkwright, President.

(12) A letter of July 9th, 1925 from P. S. Arkwright, President of the Georgia Railway & Power Company to L. J. Steele, City Attorney of the Town of Decatur, as follows, to wit:

"Dear Mr. Steele: Your letter of July 7th, with reference to paving Oak Street from the Georgia Railroad to Ponce de Leon Avenue, and paving Ponce de Leon Avenue from the courthouse east, has been received.

In order to meet the cost of this paving and the track reconstruction incidental thereto, it would be necessary for this company to pay from $21,000 to $25,000, dependent on the plan adopted for the work.

This street railroad line is now, and has been for a long time past, operated at a very great loss. Under existing conditions it is impossible to make this line pay the cost of operation. As an inevitable result of this condition the line cannot bear the burden of this paving cost.

If the City of Decatur insists upon this paving we would prefer to surrender the franchise for this line rather than be subjected to the expense. I would appreciate it if you would please take it up with the City of Decatur and let met know what their views on the subject may be. In the event they would prefer to have this franchise surrendered I will call a meeting of the Board of Directors of the Company and I am sure they will unanimously and immediately pass the necessary resolutions authorizing the surrender of the franchise.

[fol. 49] Naturally we do not want to do this, but we can't pay for the paving and we would rather surrender the franchise than have this additional burden placed upon us under present conditions.

Yours truly, P. S. Arkwright, President."

(13) Also letter of July 16th, 1925 from Mr. P. S. Arkwright, President of the Georgia Railway & Power Company, to L. J. Steele, City Attorney of the Town of Decatur, as follows, to wit:

"July 16, 1925.

L. J. Steele, Esq., City Attorney, Decatur, Ga.

DEAR MR. STEELE: It is a little more than I think the people of Decatur ought to expect of us—to furnish electric railway service at a grossly inadequate fare and then to have to pave the streets of the town besides. This is certainly not a good thing for us and in the long run I don't think it is a good thing for Decatur. In any event, we can only do what we are able to do and this depends exclusively on the earnings of the street railway. The street railway system as a whole is not earning its way even at the fare of 7 cents allowed in Atlanta. The fare of 5 cents insisted upon by the Town of Decatur is rapidly confiscating the property and runs the losses of the line to Decatur up to such an amount that there is nothing left with which to pay for street paving. In any event, this company cannot pay for the paving in Decatur, nor can it rebuild or recondition its tracks in connection with the paving.

Under the circumstances if the City of Decatur insists on paving streets and assessing this company for it I repeat in all earnestness my suggestion that we surrender [fol. 50] the franchises of the street railway in Decatur. If, however, the City of Decatur refuses to accept this then I don't know what can be done. Certainly we cannot pave the streets, nor pay paving assessment for paving the streets, nor can we do any work on the track in connection with the paving.

Yours very truly, P. S. Arkwright, President."

(14) On an application of the Georgia Railway & Power Company to increase street car fares on various lines, the Railroad Commission of the State of Georgia on September 22nd, 1920, fixed street railway fares over various lines at 7 cents per passenger. In this order of said date the commission held:

"Prior to April 14, 1919, applicant had in effect on its City and suburban lines, five cent fares with free transfers. Effective August 14, 1919, a maximum fare of six cents was authorized where a five cents fare was then charged, except as to fares between Atlanta and Decatur on the main Decatur line and between Atlanta and College Park on the

College Park Line fixed by contracts between the Company and the Towns of Decatur and College Park, held by the Supreme Court of Georgia to be valid:

Patrons on these two lines intermediate between Atlanta and Decatur and College Park pay six cents fares. * * *

The five cent fares now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory on these routes, are discriminatory. The Commission is without power to increase them. * * * increased facilities are required on the main De-
[fol. 51] catur and College Park routes, which will result in improved service. * * * As to the Main Decatur and College Park routes, on which trailers shall be used on all schedules operated during rush hours."

(15) Notice to the City of Decatur with reference to discontinuance of service by Georgia Railway & Power Company and Georgia Railway & Electric Company together with copy of resolutions duly passed by said companies, as follows, to wit:

"September 26, 1925.

To the Hon. Mayor and Commissioners, City of Decatur, Ga.

DEAR SIRS: Enclosed is a formal surrender by Georgia Railway & Electric Company, owner, and Georgia Railway & Power Company, Lessee, of the franchises or permits for the construction and operation of the electric railway within the city limits of Decatur, extending along North Railroad Avenue, Oak Street, Broad Street, East Court Square, South Court Square, and McDonough Street.

We desire to give notice in advance of the discontinuance of the operation of this electric railway line so as not to discommode the patrons of the line any more than is necessary.

Accordingly, you are notified that we will discontinue operation of this electric railway line at the end of the regular schedules on September 20th, 1925.

You are now engaged in paving some of the streets on which this line has been constructed. We suggest the advisability of suspending the paving operation until the track

is taken up as, of course, it will be necessary to disturb the paving in order to remove the track.

In this connection, we would like also to protest against the work you are doing on this track. We have already [fol. 52] protested against the paving. We call your attention also to the fact that you are improperly replacing this track and due to the manner in which you are having this work performed both the track and the paving will very soon go to pieces should cars be operated over it.

While we have placed October 1st as the date when operations will be discontinued, still if you are unwilling for the cars to continue operating until this date please let us know and we will discontinue immediately.

Yours very truly, P. S. Arkwright, President."

September 26, 1925.

To the Hon. Mayor and Commissioners, City of Decatur, Ga.

DEAR SIRS: On or about September 4, 1899, the Town of Decatur granted the Collins Park and Belt Railroad Company permission or franchise to build and operate an electric street railroad in the Town of Decatur from the western town limits on North Railroad Avenue to Oak Street, thence along Oak Street to Broad Street, thence along Broad Street to East Court Square, thence along East Court Square to South Court Square, thence along South Court Square to McDonough Street, thence along McDonough Street to North Railroad Avenue, which permit or franchise was transferred subsequently to Georgia Railway & Electric Company. Also, by ordinance adopted by the Mayor and Council of the Town of Decatur on or about March 3, 1903, the said permit or franchise was amended and an additional permit granted to double track a part of said route.

Under the said permits or franchises the said electric railway line has been constructed and operated and is now being operated in the City of Decatur, Georgia, and the same, with its permits and franchises has been leased to Georgia Railway & Power Company for a term of years.

[fol. 53] The said line of electric railway in the City of Decatur is operated at a loss and the revenues derived therefrom do not yield the cost of operating the same or earn enough to pay the taxes on account of the same. Be-

cause the rate of fares which may be charged on the said line of electric railway is unalterably fixed and rightly limited to a sum less than the cost of furnishing such service, it is impossible ever to earn on such electric railway the cost of its operation, and such operation cannot be continued except at a certain and continuing loss.

Consequently, Georgia Railway & Electric Company, as the owner of said permits and franchises, and Georgia Railway & Power Company, as the Lessee thereof, concurring herein, hereby formally surrender the said permits and franchises granted by the Town and City of Decatur for the construction and operation of the said electric railway hereinbefore referred to.

Attached hereto are certified copies of resolutions adopted by the Board of Directors of Georgia Railway & Electric Company and Georgia Railway & Power Company, authorizing the surrender of such franchises.

Yours very truly, Georgia Railway and Electric Company, by John C. Hollman, Vice President. Georgia Railway and Power Company, by P. S. Arkwright, President."

"The resolutions adopted by the Board of Directors of Georgia Railway & Electric Company with reference to authorizing the surrender of the street railway franchise and permit therein described from the Town of Decatur, were submitted to and read to the meeting.

[fol. 54] Whereupon the following resolution was offered and unanimously adopted, to wit:

Whereas, by the consent and with the concurrence of this company, Georgia Railway and Electric Company, by action of its Board of Directors, has this day authorized the surrender to the Town of Decatur of the permit or franchise to construct and operate an electric street railroad in the Town of Decatur from the western town limits on North Railroad Avenue to Oak Street, thence along Oak Street to Broad Street, thence along Broad Street to East Court Square, thence along East Court Square to South Court Square, thence along South Court Square to McDonough Street, thence along McDonough Street to North Railroad Avenue, and

Whereas, on or about March 18, 1912, the said line of electric railway, with the said permit or franchise, was leased to this company for a term of years, and

Whereas, the said electric railway is operated at a loss and its revenues do not yield sufficient to pay the actual cost of operation and the rates of fare thereon are unalterably fixed and rigidly limited to a sum so low that it is impossible for said electric railway ever to pay the actual cost of operation;

Therefore be it resolved by the Board of Directors of Georgia Railway and Power Company that it assents to and concurs in the resolution adopted by the Board of Directors of Georgia Railway and Electric Company authorizing the surrender of the said franchise to the City of Decatur, and the officers of this company are hereby authorized to join in such surrender on behalf of this company and to discontinue operation of the said electric railway line and to take up and remove the track and other structures built under the said permits and franchises.

Be it further resolved that in the event such surrender is made it shall not in any way or manner affect the obligations [fol. 55] of this company under the said lease, but the said lease shall remain in full force and effect, except as to the said railway track in the City of Decatur and the franchise therefor.

Be it further resolved that the officers of this Company be and they are hereby authorized and directed to do and perform any and all of the acts and enter into and execute any and all instruments or writings necessary or proper in their judgment to carry this resolution into effect.

I, W. H. Wright, Secretary of Georgia Railway and Power Company, do hereby certify that the foregoing is a true and correct copy of resolution adopted at a special meeting of the Board of Directors of said Company duly and regularly called and held in accordance with law and the by-laws of the Company at Atlanta, Georgia, August 14, 1925, which meeting was duly constituted by the presence of a quorum, and that said resolution has not since been altered, repealed or amended, but is of full force and effect.

Witness my hand and the seal of said Company this September 23, 1925.

W. H. Wright, Secretary.

Whereas, by ordinance adopted by the Mayor and Council of the Town of Decatur on or about September 4, 1899, a permit or franchise was granted to the Collins Park and Belt Railroad Company to build, electrically equip and operate an electric street railroad in the Town of Decatur from the western town limits on North Railroad Avenue to Oak Street, thence along Oak Street to Broad Street, thence along Broad Street to East Court Square, thence along East Court Square to South Court Square, thence along South Court Square to McDonough Street, thence along McDonough Street to North Railroad Avenue, the name of said Collins Park and Belt Railroad Company having been subsequently changed to Atlanta Rapid Transit [fol. 56] Company, and

Whereas, said Atlanta Rapid Transit Company, on or about March 28, 1902, transferred and conveyed the said permit or franchise, together with the electric railway built thereunder, to Georgia Railway & Electric Company and,

Whereas, by ordinance adopted by the Mayor and Council of the Town of Decatur on or about March 3, 1903, the said permit or franchise was amended and an additional permit granted to double track a part of said route, and

Whereas, on or about March 18, 1912, the said line of electric railway, with the said permit or franchise, was leased to the Georgia Railway and Power Company for a term of years, and

Whereas, the said electric railway is operated at a loss and its revenues do not yield sufficient to pay the actual cost of operation and the rates of fare thereon are unalterably fixed and rigidly limited to a sum so low that it — impossible for said electric railway ever to pay the actual cost of operation

Now, therefore, be it resolved by the Board of Directors of Georgia Railway and Electric Company (Georgia Railway and Power Company, Lessee, concurring herein) that the officers of this company are hereby authorized and empowered to surrender the franchise and permit hereinbefore described in the preambles to this resolution, granted by the Town of Decatur to Collins Park and Belt Railroad Company and the Georgia Railway and Electric Company, and to discontinue operation of the said electric railway

and to take up and remove the track and other structures built under the said permits and franchises.

Be it further resolved that in the event such surrender is made Georgia Railway and Power, Lessee, be and it is hereby released, relieved and absolved from continuing to [fol. 57] operate said line of electric railway or maintaining or preserving the said permits and franchises, such act in no way or manner to affect the obligations of Georgia Railway and Power Company under the said lease, but the same to remain in full force and effect except as to the said railway track in the Town of Decatur and the franchise therefore hereinbefore described.

Be it further resolved that the officers of this company be and they are hereby authorized to do and perform any and all acts and enter into and execute any and all instruments or writings necessary or proper in their judgment to carry this resolution into effect.

I, W. H. Wright, Secretary of Georgia Railway and Electric Company, do hereby certify that the foregoing is a true and correct copy of resolution adopted at a special meeting of the Board of Directors of said Company duly and regularly called and held in accordance with law and the by-laws of the Company at Atlanta, Georgia, August 14, 1926, which meeting was duly constituted by the presence of a quorum and that said resolution has not since been altered, repealed or amended, but is of full force and effect.

Witness my hand and the seal of said Company this September 23, 1925.

W. H. Wright.

(16) General Order No. 14 of the Railroad Commission of Georgia as follows, to wit:

"All rates now in effect or which may hereafter become effective, which are no higher than the maximum rates prescribed by this Commission whether such rates are the result of voluntary action upon the part of any company, corporation or person, subject to the jurisdiction of this Commission or otherwise, are hereby established as the rates of the Railroad Commission of Georgia, and no such [fol. 58] rates shall be discontinued nor raised without the

consent of the Railroad Commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the Commission, and any and all facilities, privileges or service, now in effect or practiced, or hereafter made effective, extended, or practiced, which give, grant, extend or allow patrons, shippers or other persons transacting business with said companies, corporation or other persons as much or more of the privileges, facilities or service to which they are entitled by law or by any rule, regulation or order of this commission, whether such privileges, facilities or service are given, granted, extended or allowed as the result of voluntary action upon the part of such companies, corporations or persons, or otherwise, are hereby established as the requirements of the Railroad Commission of Georgia, and no such privileges, facilities or service shall be discontinued without the consent of the Railroad Commission first being obtained, but all such privileges, facilities or service shall be given, granted, extended or allowed without hindrance, the same as other requirements of this Commission; provided that nothing herein contained shall operate as repealing in any way the provisions of Passenger Rule No. 7.

By order of Board.

H. W. Hill, Chairman. Campbell Wallace, Secretary.

(17) Ordinance of the Town of Decatur refusing the surrender of the franchise of the Georgia Railway & Electric Company and the Georgia Railway & Power Company, to wit:

"Whereas, The Commissioners of the City of Decatur, on the 28th day of September, 1925, received from John C. Hallman, Vice President of Georgia Railway & Electric Company, and P. S. Arkwright, President of Georgia Rail- [fol. 59] way & Power Company, notice that the Companies tendered to City of Decatur a surrender of the franchise granted by the Town of Decatur to Collins Park & Belt Railroad Company, September 4, 1899, and also the amendment thereto granted by ordinance on the 3rd day of March 1903; and

Whereas, it is not to the interest of the City of Decatur, at this time, to accept the surrender of said franchises.

Therefore, be it resolved by the Commissioners of City of Decatur, that the tender made by John C. Hallman, Vice President of Georgia Railway & Electric Company, and P. S. Arkwright, President of Georgia Railway & Power Company, of a surrender of the above stated franchise, and the amendment thereto, be not accepted, and the same is not accepted.

This September 28, 1925."

(18) The Georgia Public Service Commission (formerly the Railroad Commission of the State of Georgia) by order effective August 14, 1919, fixed street railway fares of the Georgia Railway & Power Company (and Georgia Railway & Electric Company), under its jurisdiction, at 6 cents per ride per passenger and subsequently trereto on September 22nd, 1920 increased street railway fares of said defendants, under its jurisdiction, to 7 cents per ride per passenger. Subsequently thereto, by an order of the Railroad Commission of December 15, 1927 said Commission increased the street railway fares of said defendant, under its jurisdiction, to 10 cents per ride per passenger with the right of purchasing four (4) tickets for thirty cents (30), (the ticket fares being at the rate of 7½ cents per ride per passenger where four tickets are purchased at one time).

(19) Prior to the year 1902 and during a period of more than thirty years various lines of street cars have been constructed in Atlanta by different corporations, some of them being chartered for horse cars and some for trolley lines. [fol. 60] One of the various lines thus built was an interurban line running from a point near the center of Atlanta eastward to the Town of Decatur in DeKalb County, following generally the course of the Georgia Railroad, but some distance south of it which is still in operation and is referred to and designated as the South Decatur line. This was originally built as a dummy steam engine route, but has long been electrified. Another trolley line running eastward from a point near the center of Atlanta eastward to Decatur some distance north of the Georgia Railroad. The permit from the Town of Decatur to build this line was as follows, to wit:

"July 20, 1892.

To the Mayor and Council of Decatur, Ga.:

The petition of W. I. Zachry, J. R. Mell and A. S. Seals shows that they are forming a company to build, equip, and operate an electric railroad from Atlanta eastward to Decatur, and that they desire for themselves, associates and assigns, the absolute franchise right to build and run said railroad along and over the following streets in Decatur; from city limits along Green Street to Broad Street, along Broad to a point opposite Oak, along Oak to North Avenue, along North Avenue to Depot Street, along Depot Street to McDonough Street, along McDonough Street to South Court Square, along South Court Square to West Court Square, along West Court quare to Green Street.

Petitioners ask that they be allowed six months or other reasonable time in which to begin work, and six months additional in which, to have said road running.

Clyde Brooks, Petitioners' Attorney.

The above petition was approved and granted with the following exception:

[fol. 61] The time for the commencement of work on said road was required to be three months and to be completed in fifteen months.

Said road to be exempt from taxation for the term of twenty years.

The Petition and amendments was then read and approved in open council."

This is the line which was subsequently discontinued by which will hereafter in this statement of facts be referred to as the North Decatur line. A third was the trolley line of the Collins Park and Belt Railroad Company running westward from a point near the center of Atlanta to the Village of Bolton some six or seven miles away. The Collins Park & Belt Railroad Company as set out in paragraph 3 of the statement of facts, built what is known as the Central Decatur line.

About the year 1890 there was organized and incorporated a company known as the Atlanta Consolidated Street Railway Company which acquired all the street car lines in and around Atlanta existing at that time, the North Decatur line being subsequently acquired by deed in 1900.

The Collins Park & Belt Railroad Company was not in existence in 1890 and was never acquired by the Consolidated Company. After that time the Consolidated Company operated its trolley lines under one management all the lines in and around Atlanta except the Collins Park & Belt Railroad Company lines and except the Atlanta Railway Company or the North Decatur line.

Subsequently after the Collins Park & Belt Railroad Company acquired all the properties of the Atlanta Rapid Transit Company it built several other lines in Atlanta and operated them.

In January 1902 the Georgia Railway & Electric Company was organized.

[fol. 62] In March 1902 the Georgia Railway & Electric Company acquired all the properties of the Atlanta Rapid Transit Company. After said date no other street car lines have been owned or operated in or from Atlanta by any other concern, except two interurban lines, one of which, the Atlanta Northern line to Marietta is a separate corporation, all of which stock is owned by the Georgia Railway & Electric Company, and the other the Stone Mountain line built and operated by the Georgia Railway & Power Company. The line in Decatur built by the Collins Park & Belt Railroad Company, which is the subject of the present litigation, was built in 1899 as authorized by permit of the Decatur City Government heretofore set out.

In 1902 the Georgia Railway & Electric Company operated two lines north of the Georgia Railroad, one which has been designated as the North Decatur Line and the other designated as Central Decatur line. Each of said lines were built and operated under separate permits from Atlanta, Kirkwood, DeKalb County and Decatur. Each of said lines include a loop through the town eastward from the court house and the two loops were practically parallel for a total distance of approximately one mile and in many cases on the same street.

In December 1902, the Georgia Railway & Electric Company began tearing up the North Decatur line within the town limits of Decatur for the purpose of abandoning its use from a point about half way between Decatur and Atlanta. The town government filed its equitable petition — prevent this action and the litigation was settled by com-

promise dated April 1, 1903 based on the City Ordinance and the Resolution of the Company's Director's as shown in Exhibit B of the petition. Thereafter the North Decatur line was taken up by the Electric Company and abandoned in the Town of Decatur and for a distance of two or three miles west thereof.

[fol. 63] In October, 1911, there was organized and incorporated a company known as the Georgia Railway & Power Company.

On January 12, 1912, a contract of lease was entered into between the Electric Company and the Power Company. The properties were delivered March 12, 1912 in accordance with this lease. In February, 1927, the Georgia Railway & Electric Company and the Georgia Railway & Power Company and other companies heretofore named were consolidated and merged into what is known as the Georgia Power Company.

Paving fi. fas. issued by the City of Decatur covering costs of paving East Ponce De Leon Ave. and issued against the Georgia Railway & Power Company, said fi. fas being for the amount of to wit; $14,387.29; showing the levy of said fi. fas. upon property other then the street railway property along or adjacent to the street paved, also showing that the levy was made upon property entirely disconnected from the street improved or paved for which the fi. fas. were issued.

By agreement of the parties, approved by the Judge, either side was allowed to introduce testimony in addition to the foregoing agreed statement of facts, said additional testimony under said agreement to be either oral testimony or in the form of affidavits.

The plaintiff in said case then introduced in evidence the affidavit of J. Howell Green, the substance of the material portions of said testimony being as follows:

Affidavit of J. Howell Green

I have seen and read a paper exhibited to me by attorneys for the City of Decatur, purporting to be a copy of the application of H. M. Atkinson and others for incorporation as The Georgia Railway & Electric Company, and so certified by the Secretary of State on April 28, 1926, said

application being sworn to by P. S. Arkwright on January 24th, 1902 before Felix Camp, Notary Public.

I know as a matter of common and public knowledge, that, from about that date and for approximately ten years [fol. 64] or more thereafter, an extensive system of electric street car lines was operated in and around Atlanta and to Decatur on most or all of the streets named in said application, by a corporation called The Georgia Railway & Electric Comapny, of which P. S. Arkwright was President, and that this included a line running out eastward on Edgewood Avenue from a point near the center of the City of Atlanta, along or near the Georgia Railroad and on the north side thereof, through the territory of several former municipalities of Edgewood, Kirkwood and Oakhurst to Decatur, running in Decatur along Howard Street, formerly called North Railroad Avenue, turning northward near the eastern boundary of Decatur, and making a loop through the Town of Decatur northward by Oak Street, westward by Ponce De Leon Avenue, formerly called Broad Street, to a point near the court house about the center of the city, thence to McDonough St., by East and South Court Square, and coming back by McDonough Street southward to North Railroad Avenue in Decatur at the Georgia Railroad, and thence back westward to the City of Atlanta by the route it went out.

About the first of the year 1912 the operation of electric street railways was commonly known to have passed into the control of a corporation called "Georgia Railway & Power Company," of which P. S. Arkwright was President, said Georgia Railway & Power Company holding the same as lessee.

There has been exhibited to me by the attorneys for the City of Decatur a paper purporting to be a copy of the application of Charles Magee of Toronto, Canada, and others to the Secretary of State, to be incorporated as the Georgia Railway & Power Company, the same filed October 16, 1911 and granted the same day, all as certified by the Secretary of State on April 28th, 1926. The lines of [fol. 65] street railway therein described appear to include those named in the application formerly made for the Georgia Railway & Electric Company as hereinbefore men-

tioned, and, in particular, the line hereinbefore specially described.

The line hereinbefore specially mentioned and described was originally built and operated wholly or in part, by a corporation which was generally known either as The Collins Park & Belt Railroad Company, or the Atlanta Rapid Transit Company, I am not sure which. The Collins Park & Belt Railroad Company was, as I am informed and believe, either sold to a corporation called Atlanta Rapid Transit Company, or the same was so changed, and still later it passed to Georgia Railway & Electric Company, by which Company it was operated, for some time about 1902 until 1912. The line referred to was built by the company named, but whether before the name was changed or afterwards, I am not positive.

In the latter part of 1902 there were three lines of electric railway being operated between Atlanta and Decatur, the most recently built of which was the line hereinbefore particularly referred to. The oldest of the three lay entirely south of the Georgia Railroad and was what was then called and still is The South Decatur line. This has been in operation for more then ten years. It had originally been built by some other corporation. The next oldest was a line built several years before the Main Decatur Line immediately north of the Georgia Railroad, also from about the center of Atlanta. This railroad was either built, or had at one time been owned and operated by a corporation known as Atlanta Railway Company. It ran to Decatur north of the Georgia Railroad but further from it then the other line. In the Town of Decatur it also made a loop and in large part paralleled the loop of the North Decatur or Main Decatur line.

In December of 1902 all three of these lines were owned [fol. 66] and being operated by The Georgia Railway and Electric Company.

About the 29th of December 1902 the Company began tearing up the tracks for the line last above described as having been once called the Atlanta Railway.

Thereupon a proceeding was brought by the City of Decatur in the Superior Court of Fulton County to enjoin the tearing up of the track.

No notice had been given the Town of Decatur of any purpose to tear it up or to abandon its use, and the first the town knew of it was when the tearing up began.

There was a temporary injunction or restraining order granted ex parte. Pending a hearing there was an adjustment reached, and a contract was made in writing about it, between the city government of Decatur and the Company. Thereafter the Company removed the poles, tracks and other structures of the old Atlanta Railway line lying within the town and as far west as a point approximately half way to Atlanta.

In or about the first of the year 1912 it was commonly known that the Georgia Railway & Electric Company leased all or practically all their properties for a long term to a corporation styled the Georgia Railway & Power Company. Since March of 1912 the lessee has operated all these lines in pursuance of that lease or had done so up to the time of the bringing of the present action. Since this action was brought the street railway lines have been continued to be operated as before, apparently by the same interests, though the operating company is now known as the Georgia Power Company. I do not know what the facts are connected with the change of name.

The Town or City of Decatur is the county seat of De Kalb County and the center is about 6 miles from the center of Atlanta, which is the county seat of Fulton County. [fol. 66½] The territory between the two cities was formerly occupied by the municipalities of Edgewood, Kirkwood and Oakhurst. In 1900 the population of Decatur by the census was about 1,400. In 1910 it was about 2,500. In 1920 it was about 6,100. Between 1900 and the present time the population has greatly increased and is believed to be not less than 12,000. The territory occupied by the Towns of Edgewood and Kirkwood is now included within the city limits of Atlanta and those towns *has* been abolished. The territory included in the town of Oakhurst is now included within the City of Decatur and Oakhurst has been abolished. The western limits of Decatur are coterminous with the eastern limits of Atlanta. The intermediate territory is largely, if not wholly urban.

J. Howell Green.

The plaintiff in said case then introduced in evidence the affidavit of T. S. Visscher, W. H. Braswell and J. P. Laird the material portions of said affidavit being as follows:

AFFIDAVIT OF T. S. VISSCHER, W. H. BRASWELL, AND J. P. LAIRD

"I have been regularly riding between Atlanta and Decatur on the Main Decatur line for 20 years, practically twice a day every day.

Prior to the period of the World War the schedule during what are called the rush hours, that is for about three hours or more in the morning, and the same or more in the afternoon, provided a car every five minutes each way, the schedule requiring about 30 minutes. This service continued a number of years.

Besides this, there were intermediate cars after every second car, between Atlanta and Hayes station, a point approximately half way between the centers of the two towns. These were called trippers.

The cars ran express from Atlanta to Elizabeth Street [fol. 67] and between Elizabeth Street and Atlanta, not putting off passengers between Atlanta and Elizabeth Street, and not taking them on between Elizabeth Street and Atlanta.

During that time the cars were generally crowded during the rush hours.

At some time, during or shortly after 1919, trailers were put on during the rush hours, two cars running on each schedule. These cars were of the same seating capacity (48 seats) as the old cars that ran on the 5 minute headway.

When this change was made or shortly thereafter, the schedule was increased to something like 35 or 40 minutes and the intervals between cars was lengthened, to 8 minutes, as the Company claimed, but in fact they are ten minutes or more.

At or about the same time, the Hayes station trippers were taken off and the express limit, which was formerly at Elizabeth Street, was moved back more than half a mile towards Atlanta, at Waddell Street in that part of Atlanta known as Inman Park, thus increasing the number of stops for the Decatur cars by four or five in a thickly populated part of the town. These stops are served as they formerly

were, by two other schedules or lines not running to Decatur.

Notwithstanding the use of trailers, the actual number of cars between Decatur and Atlanta is no larger now than they were under the old arrangement, and the discontinuance of the Hayes station trippers has actually lessened the service in point of numbers, besides the lengthening of the schedule time. Since 1920 the population thus served has greatly increased.

From Oakhurst station which is just within the Decatur limits, coming from Atlanta, it is approximately three quarters of a mile to Pattillo station in Decatur. From [fol. 68] Pattillo Station it is six or seven hundred feet to McDonough Street where the loop begins, and, from that point, the loop is approximately a mile in length back by the court house to the same point at McDonough. Pattillo is the western limit of the 5 cent contract zone as fixed by the judgment of the United — Supreme Court.

During the rush hours of the morning the cars going in to Atlanta are generally fairly well filled up by the time they reach Pat-illo, the number of passengers running from about 20 to 40 on an average, sometimes less than 20 and sometimes more than 40. By the time they reach the city limits, passing Oakhurst, the seats are generally about all taken, the number often running above 50. From there to Waddell Street in Atlanta is the greater part of the distance, and there are about 25 or 30 stops. By the time Waddell Street is reached the cars are badly crowded, the number often running well aboye a hundred.

Conditions during the rush hours of the afternoon are substantially the same as during the morning rush hours.

After the trailers are taken off in the morning, and until they are put back in the afternoon, the patronage on the car will average unusually well, and the cars are often crowded.

The defendant in said case then introduced in evidence the affidavit of F. L. Butler, the material portions of said affidavit being as follows:

AFFIDAVIT OF F. L. BUTLER

He is Vice President and Railway Manager of the Georgia Power Company and as such Railway Manager is in charge

of the street railway department of said company and the operation of its street cars. Prior thereto he occupied a similar relation to the Georgia Railway & Power Company.

Deponent attaches as part of this affidavit a tabulation No. 1 which shows the operating expenses, revenue pas- [fol. 69] sengers and passenger revenue for the street railway system of Atlanta inside what is known as the 7 mile zone for the years 1924-1927 inclusive.

Tabulation No. 2 is attached to this affidavit and made a part hereof and shows the average length of ride per revenue passenger.

The average length of ride per revenue passenger on the entire system is 3.4 miles. The average length of ride per passenger on what has been designated as the Central Decatur line, the line in question in said case, is 5.75 miles which under existing conditions results in the Decatur riders paying 5 cents for an average ride of 5¾ miles, which the average operating expense per revenue passenger for the past four years is 6.16 cents for an average ride of 3.4 miles. The average passenger on the entire system pays the rate of 2 cents per mile while the average Decatur passenger pays only .87 cents per mile, or less than one-half the system average. The average revenue per passenger on the system for the year 1927, was 6.83 cents. The auditor appointed by the Public Service Commission of the State of Georgia in a recent hearing before the Commission found that the total earnings of the Street Railway Department for the year 1926 were $5,278,794.84, and the total operating expenses were $4,527,51[illegible]74. If a 5 cent rate of fare prevailed over the lines of street railway operated in and adjacent to Atlanta had been in effect on all lines of the Company, the gross earnings would have been $3,795,062.05. In other words, the Company would have failed in the amount of $732,452.69 to take in sufficient revenue to pay actual operating expenses. Deponent says that said figures are accurate figures of operating expenses and gross earnings and do not figure any other return upon any investment of the Company used in performing the service.

[fol. 70]

Tabulation No. 1

Operating Expenses, Revenue Passengers, and Passenger Revenue Inside Seven-mile Zone

	1924	1925	1926	1927
Total Operating expenses	$4,592,544.80	$4,813,624.17	$4,704,898.32	$4,155,068.95
Revenue passengers	72,469,776	74,596,348	75,901,241	73,711,924
Passenger Revenue	4,909,040.41	5,052,378.22	5,161,958.41	5,034,237.32
Operating Expense per Revenue Passenger	6.34 ¢	6.45 ¢	6.20¢	5.73¢
Average Revenue per Revenue Passenger	6.773¢	6.775¢	6.80¢	6.83¢

Average Operating Expense per Revenue Passerger, 6.18¢.

[fol. 71] Report to the City of Atlanta on a Plan for Local Transportation

John A. Beeler, Consulting Engineer, New York
Copy of Exhibit 35, Page 173

Average Length of Ride per Revenue Passenger Based on Test Rides

	Routes	Average ride, miles
1	Decatur St.—Marietta Street	2.67
2	Ponce De Leon—Walker West View	2.92
3	Boulevard—West Hunter	1.84
4	Inman Park—Georgia Ave.	2.78
5	Highland—South Pryor	2.87
6	Forrest Ave.—Capitol	2.17
7	West Peachtree—East Hunter	1.72
8	Howell Mill Road—East Fair	2.34
9	Courtland—Central	2.14
10	Peachtree—Whitehall	2.15
11	Luckie—Woodward	2.19
12	Cooper—Richardson	1.45
13	Irwin St.—West Fair	2.04
14	Orme—Magnolia	1.53
15	Piedmont—Washington	3.00
16	Pine Street	1.89
17	Main Decatur	5.75
18	South Decatur—East Lake	5.03
19	River Line	5.36
20	College Park—Hapeville	6.00
21	Stewart Avenue Line	2.81
22	Soldiers Home—English Avenue	3.25
23	Buckhead—Oglethorpe	5.85
24	McDaniel Street Line	2.42
	System Average	3.40

[fol. 72] Defendant introduced in evidence the original answer and cross bill filed in said case, the same being verified by the affidavit of P. S. Arkwright and Thos. K. Glenn, being sworn to by P. S. Arkwright on December 5th, 1925 and being sworn to by Thos. K. Glenn on December

7th, 1925. The said answer and cross-bill by approval of the Court is not here copied and set out in full as it is specified and sent up as part of the record in said case and it is herein approved and specified as part of the evidence in said case.

Defendant introduced in evidence the amendment to the answer and cross-bill filed April 10th, 1926, the same being verified by the affidavit of P. S. Arkwright being sworn to by said P. S. Arkwright on January 29th, 1926 and being sworn to by Thos. K. Glenn on January 29th, 1926. The said amendment to the answer and cross-bill, by approval of the Court, is not here copied and set out in full as it is specified and sent up as part of the record in said case and it is herein approved and specified as a part of the evidence in said case.

The evidence being closed, after argument had, Honorable John B. Hutcheson rendered a final decree in said case as follows, to wit:

DECREE

The foregoing case coming on for final hearing and by consent of parties heard before me acting as Judge and jury, after evidence and argument, it is adjudged and decreed that defendant in said case be and it is hereby enjoined as prayed for in the petition. Judgment for $— costs if rendered against defendant. This September 15, 1928.

To the rendition of said decree and granting said order and judgment, defendant in said case now plaintiff in error excepted and now excepts and assigns the same as error and says that the said decree was erroneous and contrary to [fol. 73] law and contrary to the evidence in said case and without evidence to support it, and that said Judge erred in rendering the same and erred in not denying the relief prayed for by the plaintiff in said case and erred in granting the injunction prayed for therein and enjoining the defendant as prayed and set out in said petition.

Defendant, now plaintiff in error, further says that said Court in not granting to it the relief prayed for in its

answer and cross-bill and its answer and cross-bill as amended erred and excepts to the refusal of said Court to grant each and every one of the prayers and the relief asked for by said defendant, now plaintiff in error, in its said answer and cross-bill as amended and assigns error thereon and says that the court erred in refusing to grant it each and every one of the grounds of relief prayed for and set out in its said answer and cross-bill as amended.

The Georgia Power Company, defendant in said case, now plaintiff in error specifies as material to a clear understanding of the errors complained of the following portions of the record in said case to wit:

PRÆCIPE FOR RECORD

(1) The original petition, together with the exhibits and orders thereon, filed September 29th, 1925;

(2) The original answer and cross-bill of defendant filed on the 7th day of December 1925;

(3) The amendment to the answer and cross-bill filed on the 10th day of April, together with the orders thereon;

(4) The amendment to the answer and cross-bill filed on the 14th day of July 1928, together with the orders thereon;

(5) The final judgment and decree of said court rendered on the 15th day of September, 1928.

And now within the time allowed by law and within 20 days from the rendition of said decree, comes the defendant in said case, now plaintiff in error, and presents this its [fol. 74] bill of exceptions and prays that the same may be signed and certified as provided by law, that the errors alleged to have been committed may be considered and corrected by the Supreme Court of Georgia.

Hugh Burgess, Colquitt & Conyers, Attorneys for Plaintiff in Error.

IN SUPERIOR COURT OF DEKALB COUNTY

ORDER SETTLING BILL OF EXCEPTIONS

I do certify that the foregoing bill of exceptions is true and sets out and specifies all of record and all of the evi-

dence in said case material to a clear understanding of the errors complained of in said bill of exceptions; and the clerk of DeKalb Superior Court is hereby ordered to make out a complete copy of the portions of the record in said case which are specified in said bill of exceptions and certify the same as such and cause the same to be transmitted to the next term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This September 22, 1928.

John B. Hutcheson, Judge DeKalb Superior Court.

Acknowledgment

Service of the foregoing bill of exceptions is hereby acknowledged and copy received. All other and further service waived.

This 22d day of September, 1928.

Alexander & McLarty, Attorneys for Defendant in Error.

[fol. 75] [File endorsement omitted.]

[fol. 76] In Superior Court of De Kalb County

Petition—Filed Sept. 29, 1925

To the Superior Court of said county:

The petition of City of Decatur, as plaintiff complaining of Georgia Railway & Power Company and Georgia Railway & Electric Company, as defendants, shows to the court the following facts, to wit:

1. The City of Decatur, is a municipal corporation under the laws of the State of Georgia, situate, in the said County of De Kalb.

2. That the Georgia Railway & Power Company is a corporation under the laws of the State of Georgia, with power under its charter to construct, own, maintain and operate street railways and electric plants for the generation and transmission of heat, power and light. Its prin-

cipal office and place of doing business is in the County of Fulton, State of Georgia, but petitioner alleges and shows that said Georgia Railway & Power Company has acquired a residence in said County of De Kalb by reason of the fact that it is operating a system of street railways extending from the County of Fulton into the County of De Kalb, and along the public highways between the City of Atlanta in the County of Fulton and the City of Decatur in the County of De Kalb, and in and upon the streets of the City of Decatur; and also a system of lines for the transmission of electric current located in said County of De Kalb and extending into other counties of Georgia; and also by reason of the fact that it has an office and agent in the City of Decatur in the County of De Kalb.

3. The Georgia Railway & Electric Company is a corporation under the laws of Georgia, having its principal office and place of business in the County of Fulton, State of Georgia. The Georgia Railway & Electric Company [fol. 77] under its charter has power and authority to construct, own, maintain and operate street railways and electric plants for the generation and transmission of heat, power and light.

4. Under its charter the said Georgia Railway & Power Company now operates and maintains, and has for several years past, operated and maintained, a system of street railway, occupying various streets and rights of way in the City of Atlanta, in the County of Fulton and suburban communities adjacent to and in the vicinity thereof, to wit: East Point, College Park, and Hapeville, in the County of Fulton, and Decatur, in the County of De Kalb, and upon certain public highways and rights of ways in the Counties of Fulton and De Kalb; operating said railway system as lessee of said Georgia Railway & Electric Company.

5. One of the lines of railway of said system, and a part thereof, is a line, known as the North Decatur line, running from the corner of Pryor Street and Edgewood Avenue, in the City of Atlanta, in an easterly direction through a portion of the City of Atlanta, parallel to and north of the Georgia Railroad, entering the City of Decatur over Howard Avenue and running along Howard Avenue, Oak Street, Ponce de Leon Avenue, Court-house Square and McDon-

ough Street; the length of said line including the loop within the City of Decatur, being approximately six and one half miles.

6. A portion of said North Decatur line lies within the corporate limits of City of Decatur; the length of said line within said corporate limits being two miles, more or less; and the part of said line within said City on which fares of five cents, to and from Atlanta, are charged and collected, as will hereinafter be shown, is slightly in excess of one mile.

[fol. 78] 7. On or about the 4th day of September, 1899, Town of Decatur entered into a franchise contract with Collins Park & Belt Railroad Company, and upon the application of said Company made to the Mayor and Council of said Town, on the 26th day of August, 1899 did by ordinance adopted on said September 4, 1899, grant a permit or franchise to said Collins Park & Belt Railroad Company to build electrically equip and operate an electric street railroad in the Town of Decatur from the Western limits of said town on North Railroad Avenue to Oak Street; thence along Oak Street to Broad Street; thence along Broad Street to East Court Square; thence along East Court Square to South Court Square; thence along South Court Square to McDonough Street; thence along McDonough Street to North Railroad Avenue. The name of said Collins Park & Belt Railroad Company was subsequently to the granting of said franchise changed to Atlanta Rapid Transit Company and an electric railway was built and operated under said franchise; and petitioner is informed and believes that said franchise together with the electric railway built thereunder, was, on or about March 28, 1902, transferred and conveyed by said Atlanta Rapid Transit Company to the Georgia Railway & Electric Company. A copy of said franchise is hereto attached marked exhibit "A."

8. That in December 1902, and prior thereto, the Georgia Railway & Electric Company owned and operated three electrically equipped railway lines between the City of Atlanta, in the County of Fulton, and the Town of Decatur, in the County of De Kalb; one of said lines extended from

near the center of City of Atlanta to the Town of Decatur, south of the Georgia Railroad; two of said lines extending from near the center of City of Atlanta to Town of Decatur, on the north side of the Georgia Railroad. Sometime prior to December 1902, all of said lines were under different ownerships, but in and by December, 1902, all of said lines [fol. 79] had been acquired and were owned by the Georgia Railway & Electric Company.

9. Petitioner shows that the most northerly line of said three railways was known as Atlanta Railway Company line, but in December, 1902, was owned by said Georgia Railway & Electric Company, and that such line entered the western limits of town of Decatur, making a loop in said town, and running upon and along the following streets: Electric Avenue, Atlanta Avenue, McDonough Street, Herring or Depot Street, North Railroad Avenue, Broad Street, Courthouse Square and from Courthouse Square entering Atlanta Avenue and going out over the same line which it had entered the town.

10. The said last mentioned line had been operated for a number of years prior to December 1902, between the City of Atlanta and Town of Decatur, and over and upon the above named streets in said town, and said line was on December 1902, and for many years prior thereto serving a large number of patrons who were not convenient to any other car line, and many residences were built upon and along said line.

11. That on or about the 29th day of December, 1902, the Georgia Railway & Electric Company, without notice to Town of Decatur, began tearing up the track of the last described line of street railway, known as the Atlanta Railway Company line, within the corporate limits of said Town of Decatur, with a view to abandoning the operation of the same, and thereupon the Town of Decatur on December 29th, 1902, brought its equitable petition in the Superior Court of Fulton County, Georgia, setting forth the fact, among other facts that said Georgia Railway & Electric Company was tearing up said line of railway tracks, in the Town of Decatur, with a view of abandoning the same, and the operation of its car- upon said line, and prayed that said Georgia Railway & Electric Company be restrained [fol. 80] and enjoined from tearing up said tracks and

from abandoning the operation of its cars upon said line, and on said date, procured a temporary restraining order from the Judge of the Superior Court of Fulton County, Georgia, and filed said petition with the restraining order thereon in said Court, with process thereto attached, which petition, restraining order and process was served upon the Georgia Railway & Electric Company on the 29th day of December, 1902, together with a rule nisi issued by the Judge of said Court requiring said Georgia Railway & Electric Company to show cause before him on the 14th day of January, 1903, why the prayers of petitioner should not be granted.

12. Petitioner shows that no hearing was had in the Court on said petition, but that said Georgia Railway & Electric Company before the time of hearing thereon made application to Town of Decatur the Mayor and Council thereof, for an adjustment of the matters in said suit, and proposed an amendment to the franchise granted to Collins Park & Belt Railroad Company by Town of Decatur, set forth in paragraph 7 of this petition, and held at that time by said Georgia Railway & Electric Company as transferee, and said Town of Decatur, acting upon the suggestion of said Georgia Railway & Electric Company, entered into negotiations with said Company which resulted in the Mayor and Council of Town of Decatur adopting an ordinance on the 3rd day of March, 1903, amending the franchise granted to said Collins Park & Belt Railroad Company, on the 4th day of September, 1899, which ordinance provided among other things, that said Georgia Railway & Electric Company should have the authority, right, permission and consent to discontinue the operation of, abandon and remove the tracks, poles and other structures constituting the street railway line known as said Atlanta Railway Company, in the Town of Decatur, heretofore described, and [fol. 81] in consideration of such authority and permission, and the benefits resulting to said Georgia Railway & Electric Company therefrom, said ordinance provided that said privileges were granted only on condition that the provisions of said ordinance shall first be accepted by said Georgia Railway & Electric Company, and that said Georgia Railway & Electric Company, its successors and assigns,

whether by contract, or by operation of law, shall be bound to do among other things, the following:

(a) "To never charge more than five cents for one fare for one passenger upon its main Decatur line, above referred to as the Rapid Transit line, and one trip upon its regular cars from the terminus of said line in the City of Atlanta to the terminus of the same in the Town of Decatur, or from the terminus of said line in the Town of Decatur to the terminus of the same in the City of Atlanta, and the trip either way shall include the entire loop in the Town of Decatur, though a greater fare may be charged when passengers are transported between the hours of twelve o'clock midnight and five o'clock A. M."

(b) "To gradually, from time to time, as it may obtain permission so to do, and may have funds available for such purpose double track said Rapid Transit line from terminus to terminus, the loop already described in Town of Decatur being considered a double track; provided the time within which said double track shall be completed does not exceed five years, in the event it can obtain permission to construct said double track, which said double track when completed, shall be maintained in a substantial, safe and expeditious manner, and shall be operated with cars and rolling stock kept in a safe and comfortable condition."

The said ordinance of Town of Decatur, adopted on the [fol. 82] 3rd day of March, 1903, was accepted by the Georgia Railway & Electric Company, by the adoption of a resolution by the Board of Directors of said Company and the provisions of said ordinance agreed, on or about the 31st day of March, 1903, and a contract embodying the provisions of said ordinance was duly entered into by and between the Town of Decatur and the Georgia Railway and Electric Company, on or about the first day of April, 1903, being signed on the part of Town of Decatur by the Mayor and Clerk thereof, and on the part of the Georgia Railway & Electric Company by its President and Secretary.

A copy of said ordinance, of said resolution and of said contract is hereto attached, the same made a part of this petition to which reference is made as often as may be necessary, which is set forth in exhibit "B" hereto attached.

13. The line described in said ordinance as the main Decatur line or the Rapid Transit line is the same line as now known as the North Decatur line, the route of which is described in paragraph 7 of this petition.

14. Petitioner alleges that said contract, embodying the provisions of said ordinance, set forth in paragraph 12 of this petition, was made in and was to be performed in said County of DeKalb.

15. Petitioner further shows, that after the adoption of said ordinance and the execution of said contract, set forth in paragraph 12, of this petition, the suit of Town of Decatur against Georgia Railway & Electric Company, filed in the Superior Court of Fulton County of December 29, 1902, was settled between the parties and the same was by order of the Court dismissed, with the cost of court against the defendant.

16. Petitioner shows that said contract entered into between said Town of Decatur and said Georgia Railway & [fol. 83] Electric Company has been fully executed on the part of Town of Decatur, said Town of Decatur having permitted said Georgia Railway & Electric Company to take up and remove the tracks, poles and all other equipment connected with said line of railway known as Atlanta Railway Company, in said Town of Decatur which was being operated under an unlimited franchise granted by Town of Decatur, and having permitted the Georgia Railway & Electric Company to abandon the operation of said line, to the detriment and inconvenience of the citizens of said town, upon the promise and obligation of said Georgia Railway & Electric Company that it would perform all the terms and conditions imposed upon it by the ordinance and contract set forth in exhibit "B" to paragraph 12 of this petition; that said Georgia Railway & Electric Company did tear up and remove the tracks, poles and all equipment connected with said line and abandoned the operation of the cars thereon immediately after the execution of said contract, and during all these years it and its lessee, the Georgia Railway & Power Company, have been relieved of the operation of said line and the expense of maintaining the same; and the said line was torn up not only in the

Town of Decatur but to a point at the intersection of McLendon Avenue and Clifton Street a distance of some three and one half miles from the Town of Decatur, within the County of DeKalb.

17. Petitioner is informed and believes that the Georgia Railway & Electric Company on or about the 18th day of March, 1912 leased its entire system of electric railways, located in the Counties of Fulton and DeKalb, in the State of Georgia, operated in the City of Atlanta, and adjoining territory, with lines extending into the municipalities of East Point, College Park, Hapeville, and Decatur, and among which lines of electric railways was the line known [fol. 84] as the North Decatur line, fully described in paragraph 7 of this petition. After the adoption of said ordinance and the execution of said contract, set forth in exhibit "B" to paragraph 12 of this petition, the Georgia Railway & Electric Company continuously operated cars upon said line until the same was leased to said Georgia Railway & Power Company, on or about March 18, 1912, one of the defendants herein, and that since said lease, the said Georgia Railway & Power Company has continued to operate said line, charging only five cents for one fare for one passenger between the City of Atlanta and City of Decatur, and vice versa, and to this date, and have substantially complied with the terms of said ordinance and contract above referred to, during a period of more than twenty-two years, building said double track as provided by said contract.

18. Said ordinance of March 3, 1903, and said contract of April 1, 1903, made in pursuance of said ordinance, as set forth in exhibit "B" to paragraph 12 of this ordinance, is a valid, subsisting, and binding contract upon said defendants, and obligates them to operate said North Decatur line within the limits of City of Decatur, and to and from its terminus in the City of Atlanta to its terminus in the City of Decatur, and vice versa.

19. Petitioner shows that on or about October 5, 1920, said Georgia Railway & Power Company and said Georgia Railway & Electric Company gave notice to the Mayor and Council of Town of Decatur, as follows:

"You are hereby notified that on and after the 20th day of October 1920, the fare to and from Atlanta and Decatur on the Main or North Decatur line operated by the Georgia Railway & Power Company will be at the rate of seven (7) cents.

[fol. 85] Denying the validity or legality of any so-called contracts provi-s limiting such fare to five (5) cents, (set out in an ordinance of the Town of Decatur of March 3, 1903, and an agreement of April 1, 1903, signed by Town of Decatur and the Georgia Railway & Electric Company); you are notified that even if the provision with reference to fare, to and from Atlanta and Decatur, was binding at any time, it is not now binding or legal, and is hereby terminated from and after the above named date.

This 5th day of October, 1920."

This notice was signed by the president of each said defendant Companies and served upon the Mayor of Town of Decatur.

On October 19, 1920, Town of Decatur, in response to said notice, filed its equitable petition in the Superior Court of DeKalb County, known as suit number in said Court as Number 2497, against the Georgia Railway & Power Company and against Georgia Railway & Electric Company, and in said suit said contract, described in the above and foregoing notice, has been adjudicated by the Supreme Court of this State, by the Supreme Court of the United States, and by final decree in this Court, to be a valid, binding and subsisting contract upon said defendants and each of them. Reference to said suit is hereby prayed.

20. Said North Decatur line has since its construction *has* been operated by said defendant companies and their predecessors dependently with and as a part of the single system of street railways which defendants have, and as part of one and the same system, the said North Decatur line has been operated by said defendant companies, and as an evidence thereof, said ordinance of March 3, 1903, set forth in Exhibit "B" to paragraph 12 of this petition, the following provision appears therein:

[fol. 86] "To grant one transfer ticket upon the payment of one full fare for the purpose of giving one continuous

ride from any point within the Town of Decatur upon said Rapid Transit line to any point within the City of Atlanta on any of its lines in said City and vice versa, which does not result, however, in carrying passengers on a parallel line, or in the same general direction from which he came, provided such transfer is requested at the time of payment of the fare, and provided the passenger shall abide by such reasonable rules and regulations as the Company may make, so as to limit the time in which such transfer is used, in order that it may be available only for the first connecting car, and in order to cover such other matters as the company may deem necessary or proper to protect the Company from imposition, abuse, or assignment of such transfer, and to avoid liability in damages from mistakes that may be made by the passengers or the employees in regard to such transfers."

21. The defendants have not at any time operated said line of railway alone within the corporate limits of Town of Decatur or the City of Decatur, but at all times it has been operated and maintained in connection with the system of railways in the City of Atlanta, and the entire line of said North Decatur line has been in operation, the cars running thereon its entire length to and from Atlanta and Decatur and the line in Decatur has at all times only as a part of the North Decatur line, passengers aboarding the car on said line in Decatur would or could ride all the way to the terminus of said line in the City of Atlanta, and vice versa, for the one fare and the line has never at any time been limited by said defendant companies, or either of them, to the line within the corporate limits of the City of Decatur.

22. By an act of the General Assembly of Georgia, ap- [fol. 87] proved August 15, 1922, the charter of Town of Decatur was amended so as to change the name from Town of Decatur to City of Decatur, and said Act provided, that no valid subsisting contract then in existence between said Town of Decatur, as heretofore incorporated, and any present Company or corporation, shall be impaired or affected by said act, but that said City of Decatur, as therein incorporated, shall succeed and enjoy all the rights of the Town of Decatur as heretofore incorporated, under and by

virtue of any such contract, and shall assume the obligation undertaken in any such contract.

23. That on September 26, 1925, said Georgia Railway & Power Company and said Georgia Railway & Electric Company notified petitioner of their alleged surrender of the permits, franchises and contracts of Town of Decatur for the construction and operation of the said North Decatur car line, and that they would discontinue operation of the line at the end of the regular schedules on September 30, 1925. A copy of said notice, together with the resolutions adopted by their Board of Directors, authorizing said notice, are hereto attached, all marked Exhibit "C" and made a part of this petition.

24. Petitioner has refused to accept said alleged surrender of said franchises, and has notified defendants of their refusal.

25. Neither of said defendants has the right to surrender said franchises, in law or equity, and by the ordinance of March 3, 1903, and the contract made in pursuance thereof, dated April 1, 1903, and fully set forth in exhibit "B" to paragraph 12 of this petition, the said Georgia Railway & Power Company and said Georgia Railway & Electric Company are bound to maintain and operate said North Decatur line to and from Atlanta and Decatur, in accordance with [fol. 88] the provision of said contract, and they cannot lawful- surrender their said franchises and repudiate the provisions of said contract and violate the terms thereof, and to discontinue the operation of the cars on said line between the terminus of said line in the City of Decatur and the terminus of said line in the City of Atlanta, or any part of said line, is a violation of the terms and provisions of said contract, and is a breach thereof, and for the said defendants to carry out their threats made in said notice and the resolutions attached thereto as set forth in exhibit "C" to paragraph 23 of this petition is an absolute violation of the terms and provisions of said contract of April 1, 1903 and is a breach thereof and a continued breach of said contract and said ordinance of March 3, 1903.

26. There is no law authorizing said defendants to surrender their said franchises, no order of any function of

government authorizing said defendants to cease the operation of cars upon said North Decatur line, or any part thereof, or to discontinue said operation of the same or the rendering of service thereon in the manner which they have given on said line for many years past, and their threat so to do is without warrant of law, and in violation of law and of their said contract.

27. On or about the 23rd day of December, 1909, the Railroad Commission of Georgia passed a general order, known as order Number 14, and under the law of Georgia, said order has the effect of law, relating to subject matters covered by said order. A copy of said order is hereto attached, marked exhibit "D" to which reference is hereby made.

28. At the time of the adoption of said order by the Railroad Commission of Georgia, the said Georgia Railway & Electric Company was operating the said North Decatur line within the corporate limits of Town of Decatur, and [fol. 89] from the terminus in Decatur to the terminus in the City of Atlanta, and vice versa, in accordance with the provision of said ordinance of March 3, 1903, and said contract of April 1, 1903, and said operation was a part of the general system of electric railways in and around the City of Atlanta, as heretofore described, and after March 18, 1912, the Georgia Railway & Power Company continued to so operate said line and said system of lines as the lessee of said Georgia Railway & Electric Company, and has continued to so operate the same to this date.

29. The right of defendants, and each of them, to surrender their franchises, and especially the rights and obligations of the ordinance of March 3, 1903, and the said contract of April 1, 1903, and the right to cease the operation of the line therein described, were determined adversely to them in said suit, number 2497 by the Supreme Court of Georgia and the Supreme Court of the United States, and by the final judgment and decree of this court, in said case, as hereinbefore set forth, and the judgment of said Court in said cause are res adjudicata on the question of the validity of said contract, and are against these defendants.

30. Petitioner alleges that the said contract of April 1, 1903, and the said ordinance of March 3, 1903, were made

and adopted by Town of Decatur for the general benefit of said Town and the public in general, and that a violation and breach of said contract by said defendants, or either of them, will cause and bring about untold and irreparable injury, damage and inconvenience to said City of Decatur and to the citizens thereof and the general public, and there is no adequate remedy to avoid the consequences arising therefrom except by the intervention of the court by an injunction. There are likely to arise a multiplicity of suits [fol. 90] between said defendants and various parties interested, if the threats made in said notice of September 26th, 1925, are put into effect. The damage which would be caused thereby to any number of people is not possible of computation, the injury therefrom would be, as aforesaid alleged, irreparable, and there is no just or adequate remedy for the measurement of such damages.

31. Petitioner brings this action against said defendants upon the contract of April 1, 1903, entered into between Town of Decatur, and the Georgia Railway & Electric Company in pursuance of said ordinance of March 3, 1903, set forth in said exhibit "B" in paragraph 12 of this petition, for the purpose of preventing restraining and enjoining the said defendants from committing a breach of said contract as they have threatened to do in their notice to your petitioner, a copy of which is set out above in this petition.

32. Petitioner shows that if defendants carry out their threats set forth in their said notice of September 26, 1925, your petitioner and members of the public in and around Decatur will be greatly damaged, and such acts will result in the taking of their property without due process of law, and in violation of article 1, Section 1, paragraph 3 of the Constitution of Georgia, which provides: "No person shall be deprived of life, liberty, or property, except by due process of law."

33. Petitioner shows that it is entitled to have the said North Decatur line maintained and operated, as provided by said ordinance of March 3, 1903, and the contract of April 1, 1903, made in pursuance of said ordinance, without any interruption; and unless said defendants are restrained and enjoined, they will, at the end of the regular schedule

on September 30, 1925, cease the operation of cars upon said North Decatur line, will tear up the tracks of said line, [fol. 91] and remove the poles and other equipment thereof to the great inconvenience and damage to petitioner and the public generally.

Now, wherefore, waiving discovery of each of the defendants herein, petitioner prays as follows:

(1) That the said defendants and each of them, their officers, agents, servants and employees, be temporarily and permanently restrained and enjoined as follows:

(a) From violating the provisions of said contract of April 1, 1903, and the ordinance of March 3, 1903, upon which said contract is based.

(b) From violating the provisions of said General Order, Number 14, of the Public Service Commission of Georgia.

(c) From ceasing to maintain and operate said North Decatur line, as at present maintained and operated, and in accordance to the regular schedule for the operation of cars upon said line to and from the City of Atlanta and City of Decatur, or any part thereof.

(d) From abandoning said line, from dismantling or removing the tracks, poles, wires, or other apparatus or equipment of said line, in the corporate limits of the City of Decatur, or any part of said line between the terminus in the City of Decatur and the terminus in City of Atlanta.

(e) From in any manner carrying into effect the threats made in their said notice of September 26, 1925.

(2) That said contract of April 1, 1903, and the ordinance of March 3, 1903, on which said contract is based, be decreed to be valid and binding upon said defendants, and upon each of them, and to require the said defendants to carry out the provisions of said contract.

(3) That it be further decreed that said defendants and each of them have no right to surrender said franchise contract, or to cease operation thereunder.

[fol. 92] (4) That petitioner may have such other and further relief in the premises as it may seem meet and proper to the Court.

(5) That process do issue requiring the defendants, and each of them, to be and appear at the next term of this Court to answer this petition.

(6) That rule nisi issue requiring the said defendants, and each of them, to show cause before this court why the prayers of this petition should not be granted.

L. J. Steele, Attorney for Petitioner.

Duly sworn to by Scott Candler. Jurat omitted in printing.

ORDER TO SHOW CAUSE

The foregoing petition read and considered, sanctioned and ordered filed.

Let the defendants, and each of them, show cause before me on the 24th day of October, 1925, 10 o'clock A. M., in the court house at Decatur Georgia, why the prayers of said petition sould not be granted.

In the meantime, and until further order of Court, the defendants and each of them, their officers, agents, servants and employees are each and all temporarily restrained and enjoined as prayed in this petition.

This the 29th day of September 1925.

John B. Hutcheson, Judge of the Superior Courts, Stone Mountain Circuit.

[fols. 93 & 94] Exhibit "A" to petition omitted; printed side page 6 ante.

[fols. 95-102] Exhibit "B" to petition omitted; printed side page 14 ante.

[fols. 103-109] Exhibit "C" to petition omitted; printed side page 51 ante.

[fol. 110] Exhibit "D" to petition omitted; printed side page 57 ante.

[fol. 111] [File endorsement omitted.]

In Superior Court of De Kalb County

City of Decatur

versus

Georgia Railway and Power Company & Georgia Railway & Electric Company

Injunction Complaint

Summons and Sheriff's Return

To the Sheriff, or his Deputy, of said County and to the Sheriff, or his Deputy, of Fulton County, Greeting:

The defendants are hereby required, personally or by at- [fol. 112] torney to be and appear at the Superior Court to be held in and for said County on the first Monday in December 1925, then and there to answer the plaintiff's complaint as in default thereof said Court will proceed, as to justice shall appertain.

Witness the Honorable John B. Hutcheson, Judge of said Court, this 29th day of September 1925.

B. F. Burgess, Clerk.

Georgia,
De Kalb County:

Served the Defendant Georgia Railway & Power Co., a Corporation by serving C. E. Brown, Agent by leaving a copy of the within writ and process and order, with him personally, at the office and place of doing business of said corporation, in De Kalb County, Ga.

This Sept. 29th, 1925.

O. T. Griffin, Deputy Sheriff.

In Superior Court of De Kalb County

[Title omitted]

Answer—Filed Dec. 7, 1925

Now comes the Georgia Railway & Power Company and the Georgia Railway & Electric Company and each without

waiving their plea to the jurisdiction and without waiving their demurrer heretofore filed for cause of answer say:

(1) Defendants admit paragraphs 1, 3, 7 and 23 of the petition.

(2) Defendants deny paragraphs 2, 4, 5, 6, 8, 9, 10, 13, 14, 16, 17, 18, 19, 20, 21, 25, 26, 28, 29, 30, 32, and 33 of the peti-
[fol. 113] tion as alleged.

(3) As to paragraph 11 of said petition defendants deny the allegations as therein made. Defendants had ceased to operate the line referred to in said paragraph before the filing of said petition and before beginning to tear up and remove the tracks of said line.

(4) Defendants deny paragraph 12 of said petition as therein alleged. Defendants admit that the exhibits referred to in said paragraph and attached as Exhibit "B" to the petition in said case are correct copies of the ordinances and resolution and alleged contract therein referred to.

(5) As to paragraph 15 of said answer, defendants admit that the suit therein referred to was dismissed, but the balance of said paragraph is denied.

(6) Answering paragraph 22 of said petition, defendants deny the conclusions of the pleader therein set out. Defendants say that said Act of the Legislature speaks for itself.

(7) Answering paragraph 24 of said petition defendants say that the surrender of the franchise referred to in said paragraph was complete and effective without any action on the part of plaintiff, and that there was no legal necessity for plaintiff either to refuse or to accept said surrender. Defendants further say that said paragraph is a mere conclusion, and should set out the alleged action of plaintiff in attempting to refuse the acceptance of said surrender.

(8) Answering paragraph 27 of said petition, defendants admit that the Railroad Commission passed the order referred to therein, and that Exhibit D of said petition is a correct copy of said order; but defendants say that said

order is immaterial and irrelevant to said case, and has no application to the situation involved in said case, and af-
[fol. 114] fords no support in law to the case attempted to be made by plaintiff in said petition.

(9) Answering paragraph 31 of said petition, defendants say that the same does not legally require an answer, but defendants deny the right of petitioner to bring the action referred to in said paragraph, or to maintain the case which is attempted to be made in said petition and defendants deny that plaintiff is entitled to any of the rights mentioned in said paragraph. Defendants deny that plaintiff is entitled to any of the relief sought in said case.

(10) And for further answer and by way of cross-bill defendants say: The line of street railway described in paragraph 7 of the petition is separate and distinct from all other lines of street railway of said defendants.

(11) Subsequent to the decision of the Supreme Court of the State of Georgia (149 Ga. Page 1, et seq.) construing the acts of the Legislature of the State of Georgia, of 1907, Acts 1907 page 73 et seq. (Georgia Code Section 2662) conferring jurisdiction upon the Railroad Commission of the State of Georgia (now Georgia Public Service Commission) over street railways, and holding that the claimed contract set out in the petition separates said Decatur traffic and said Decatur line of railway and the franchise under which the same was built and operated from other street railway traffic and other street railway lines placed under the Commission's jurisdiction, said Commission by order effective August 14th, 1919 fixed street railway fares of the defendants under its jurisdiction at 6 cents per ride per passenger and subsequent thereto on September 22nd, 1920, further increased street railway fares of defendants under its jurisdiction to 7 cents per ride per passenger; and with refer-
[fol. 115] ence to Decatur traffic and the line of railway carrying the same held:

"Effective August 14th, 1919, a maximum rate of 6 cents was authorized where a 5 cents fare was then charged except as to fares between Atlanta and Decatur on the Main Decatur line * * * fixed by contracts between the Company and the Town of Decatur * * * held by

the Supreme Court of Georgia to be valid. Patrons on the line immediately between Atlanta and Decatur * * * pay 6 cents. The 5 cents fare now in effect on the Main Decatur line, contracted for under vastly different conditions than not exist, is not fairly compensatory, and, as to the patrons of the company on other routes, are discriminatory. This Commission is without power to increase them."

"Effective October 1st, 1920 applicant (Georgia Railway & Power Company) is hereby authorized to charge and collect as its maximum passenger fare the sum of 7 cents per passenger where a 6 cents fare is now charged. * * * Except such fares on the Main Decatur route as are fixed by contract between the Company and the City of Decatur. * * * Held by the Supreme Court of Georgia, to be valid contracts."

(12) Said commission in said order expressly held that the 5 cents rate of fare as to the said Decatur traffic and said Decatur line was confiscatory, as well as discriminatory, but that it had no jurisdiction over the same. Said holding was that said Decatur line was separate and distinct from the other lines of defendants.

Defendants further say that the Acts of the Legislature of 1907 hereinabove referred to and the ruling of the Supreme Court of the State of Georgia in construing said act was a complete separation of said Decatur Railway line from all the other railway lines of these defendants, mak-[fol. 116] ing of said Decatur line a separate and distinct entity, classifying the same in a classification distinct from the other lines of railway of defendants, and making said Decatur line of railway subject to rules of law, and rules of traffic and rules of operation entirely distinct from the rules applicable to other lines of Railways of these defendants.

(13) Defendants say that the present case is not one in which a commission having jurisdiction over all the lines of a street railway company has the power to fix a rate on some one particular line which may not be fairly compensatory as to that particular line, if the aggregate result of all the lines of railway under the fares fixed by the

commission gives a compensatory return upon the property invested. However, in this connection defendants show that even taking into consideration all the line of Railway of these defendants the result of the operation under present conditions and the 7 cents fare allowed by the commission does not amount to a fair return upon the value of the property devoted to and used in the performance of such service. In the year 1922 there was a failure to earn this legal return on all of said lines in the sum $1,132,290.23; in the year 1923 there was a similar failure in the sum of $1,274,800.53; in the year 1924 there was a similar failure in the sum of $1,476,169.41; and that for the 10 months ending October 31, 1925, there was similar failure in the sum of $1,343,228.88. Moreover, with regard to the rate on the said Decatur line, the Georgia Public Service Commission, as above alleged has already adjudicated that the rate is confiscatory.

(14) Under the said Acts of the Legislature of the State of Georgia, and said decisions and commissions' rulings said line of railway involved in the case at bar and the [fol. 117] franchise under which same was operated and the traffic thereon are separate and distinct from other lines of railway of defendants. Over said line and over the Traffic thereon the Georgia Public Service Commission has no jurisdiction and neither said commission nor these defendants can change the rate of fare so long as the defendants continue to exercise said franchise and to operate said line thereunder. Defendants deny that any of the decisions referred to in said petition hold that said defendants can be compelled to have their property perpetually confiscated or be perpetually compelled to operate said line and to use said franchise at a rate which is confiscatory, and which defendants aver will continue and will always be confiscatory. Defendants say that on account of the facts hereinafter set out it has the constitutional right to surrender said franchise, give up all rights thereunder and cease to operate said line.

(15) Defendants say that the street railway line described in paragraph 7 of the petition is approximately 1 mile (.993 miles) long. What plaintiff designates as the Main or North Decatur line is not a single line of railway

but is composed of several separate and distinct lines of railway, constructed and operated under separate and distinct franchises granted to separate and distinct companies from separate and distinct municipalities and counties. One of said lines runs from the corner of Pryor and Edgewood Streets in the City limits of Atlanta and over various streets of said municipality to the corporate limits of what was formerly the Town of Edgewood. This line was constructed and operated under a franchise from the City of Atlanta. Another of said lines extend- through the corporate limits of what was formerly the Town of Edgewood [fol. 118] to the corporate limits of what was constructed and operated under a franchise from the Town of Edgewood. Another of said lines extends through the corporate limits of what was formerly the Town of Kirkwood. This line was constructed and operated under a franchise from the Town of Kirkwood. One of said lines extends from the limits of what was formerly the Town of Kirkwood through DeKalb County to what was formerly the limits of the Town of Decatur. This line was constructed and operated under a franchise from the County of DeKalb. The other of said lines is the one constructed and operated under franchise from the Town of Decatur approximately 1 mile in length as aforesaid. This line is the only one of said lines for the construction and operation of which any consent or franchise of plaintiff or its corporate predecessor had to be obtained or was obtained. The franchise under which said line was constructed is the only franchise of any of said lines which could be surrendered to plaintiff for the reason that it was the only one of said franchises that was obtained from plaintiff and defendants therefore surrendered to plaintiff as the grantor thereof all the franchise obtained, held or enjoyed by defendants from plaintiff in connection with any one of said lines of Railway.

(16) Defendants allege that to compel them to operate under the claimed contract set out in the petition would be to confiscate defendant's property for that it costs the sum of 8.70 cents to haul each passenger who is required under said contract to be hauled for the sum of 5 cents. Said costs of 8.70 cents, represents only the actual costs

of operation in hauling said passenger, and to make a reasonable return on the investment requires 2.42 cents per passenger per ride in addition, making a total cost per passenger per ride of 11.12 cents, so that the loss on each [fol. 119] passenger hauled under said contract is 6.12 cents. Inasmuch as the enforcement of said contract makes it impossible ever to raise the rate of fare above 5 cents per ride per passenger, this loss to defendants would continue indefinitely and perpetually as long as defendants exercise said franchise and continue to operate said line of railway under said contract. Defendants say that to compel them to continue to operate and to refuse them the right to surrender said franchise and the ordinance of plaintiff hereto attached as Exhibit "A" and made a part of this petition, confiscates the defendants' property. To compel the defendants to go on at such loss would be to take their property without just compensation which is a part of due process of law, and therefore would be a violation of the 14th amendment to the constitution of the United States set forth in section 6700 of the Code of the State of Georgia, and would likewise be a violation of the constition of the State of Georgia in that it would be denying to defendants the equal protection of the law in its property and thus violates Article I, Section 1, Paragraph 2, of the constitution of the State of Georgia, as contained in Section 6358 of the Code of the State of Georgia; that said action invoked at the hands of this Honorable Court by plaintiff would also be a violation of defendants' constitutional rights as protected by Article 1, Section 1, paragraph 3 of the constitution of the State of Georgia, in that it would be depriving defendants of their property without due process of law, and thus violate said paragraph as contained in Section 6359 of the Code of the State of Georgia; and said action so invoked of this Honorable Court by plaintiff would also be a violation of the Constitution of the State of Georgia, and of Article 1, Section 3, [fol. 120] paragraph 1 of said constitution as contained in Section 6388 of the Code of Georgia, in that it would be the taking of the private property of these defendants for public purposes without just and adequate compensation being first paid.

(17) In addition to the confiscatory losses, hereinabove set out, plaintiff is seeking to impose upon defendants large additional burdens which will greatly increase said losses, if defendants be compelled to continue the exercise of said franchise and the operation of said line of railway thereunder. Said claimed contract restricts to 5 cents per ride per passenger any compensation which defendants can receive either now or in the future for the public service rendered in operating said line of railway as aforesaid. Since the date of operation of said so called contract, at the instance of plaintiff, the Legislature of the State of Georgia has modified said contract by purporting to give to plaintiff the right through the imposition of additional burdens to increase the costs of hauling passengers and rendering the public service on said line of railway, while at the same time denying to defendants any right to have or to obtain in any manner increased fares to compensate for said increased costs and to give defendants a return upon their property invested in said service. The Legislature of the State of Georgia by Acts of 1919 page 934, et seq. purported to give plaintiff the right to assess upon defendants certain paving charges for the paving of the streets along which said line of railway is laid and on the 15th day of May 1925, plaintiff passed an ordinance, a copy of which is hereto attached and marked Exhibit "B" and made a part of this answer, whereby plaintiff is undertaking to exercise said power and to compel the payment by [fol. 121] defendants of the costs of paving as aforesaid to the amount of $23,804.50. In addition to said paving costs, by said ordinance plaintiff is undertaking to impose upon defendants additional costs of several thousand dollars for the moving of defendants' tracks and the changing of the grades in said streets to conform to said scheme of paving. Defendants aver that to compel their continued exercise of said franchise and their continued operation of said line of railway under said contract and their payment of said additional burdens sought to be imposed while compelling them still to perform said public service at the grossly inadequate rate prescribed in said contract is an aggravation, of the constitutional wrongs hereinabove set out and is of itself, a further and additional violation of defendant's constitutional rights as stated in the Sections

of the Constitution of the United States and of the Constitution of the State of Georgia, hereinabove specifically set out. With reference to this imposition of additional burdens defendants here repeat specifically the allegations hereinabove made as to the various reasons why said action is a violation of defendants' constitutional rights. To compel defendants to sustain said additional burdens and to deny defendants the right to surrender said franchise violates each and all of the provisions of the Constitution of the United States and of the State of Georgia hereinabove specifically referred to and enumerated. Defendants show that prior to their surrender of said franchise, in an effort to prevent additional losses, defendants communicated with plaintiff, a copy of said communications are hereto attached and marked Exhibits C, D, and E, and made a part of this answer, and endeavored to prevent plaintiff from imposing any additional and unwarranted and confiscatory burdens of paving charges upon defend-
[fol. 122] ants; but said attempts of defendant were unavailing and defendants thereupon surrendered said franchise.

(18) Said Act of the Legislature of the State of Georgia (Acts 1919 page 934 et seq.) purports to confer upon plaintiff the right to assess the paving charges hereinabove referred to not only against the property of the defendant, Georgia Railway & Electric Company, located in the streets along which said paving is to be laid, but also, as construed by the Court of Appeals, of Georgia, undertakes to confer upon plaintiff the right to assess said charges not only against said property claimed to be benefited by said paving, but also against any and all other property of defendants whether located in said streets or not; and to confer upon plaintiff the right to issue judgment and execution personal and general in its nature against defendants, to be satisfied out of any property of defendants, whether claimed to be benefited by said paving improvements or not. Plaintiff under said attempted grant of power is endeavoring to fix not only upon the property of the defendant, Georgia Railway & Electric Company located in said streets a lien for the costs of said paving charges and improvements but is also endeavoring, as shown by said ordi-

nances hereinbefore referred to, to issue against the defendant Georgia Railway & Power Company, which is not the owner of the property in said streets to be paved, a general and personal execution and fi. fa. constituting a lien upon all the property of the defendant Georgia Railway & Power Company, whether located in said streets or not. Defendants aver that the only theory and the only basis in law upon which the said paving charges can be assessed against any property is upon the theory and upon the basis that said paving and improvement is of special benefit to the particular property along which said improvement is made. Defendants aver that, even as to the property of the defendant Georgia Railway & Electric Company, located in said streets where said improvement is to be made there is not and cannot be any direct benefit to said prop-
[fol. 123] erty. Said improvement does not and cannot in any way result in any particular benefit or any benefit of any character even to said property located in said streets. Defendants aver that, even if it could be said that such paving and street improvements could result in benefit to the property of the defendant Georgia Railway & Electric Company located in said Streets, still said benefit would be far less than the costs attempted to be imposed upon defendants and in addition the said costs are largely more than the value of said property in said streets after said improvements are made. Especially is this true in this case, because the only property affected in any way by said improvement is the franchise in said street and the physical tracks and wires of defendant Georgia Railway & Electric Company located therein. Said cost is largely more than the value of said property, including said franchise, and said improvement cannot enhance the value of said property, because the same is already valueless by reason of the fact that said alleged contract prevents it from ever affording any return to its owner, and the impossibility of raising the rate of fare prevents the possibility of any increase in the future on the value of said property. Defendants aver that not only is this true as to defendant Georgia Railway & Electric Company, but the same is even more true as to the Georgia Railway & Power Company, which is not the owner either of said franchise or of any of said physical property in said streets connected therewith.

(19) As already stated aforesaid said Act of the Legislature of the State of Georgia, and said ordinances of petitioner not only undertake to allow the issuance of execution against the property in said streets, and the sale of same thereunder but said act and said ordinances purport to al- [fol. 124] low and petitioner is attemptint to exercise the power of issuing execution against defendant Georgia Railway & Power Company personal and general in its character, under which petitioner can and will unless restrained sell any property of defendant Georgia Railway & Power Company not even remotely adjacent to or affected by said improvement. For said reasons said Act of the Legislature as thus construed, and said ordinances of plaintiff as thus sought to be enforced are unconstitutional and a violation of the 14th Amendment to the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia, in that it is a depriving of each of said defendants of its property without due process of law and a denial to each of the defendants of the equal protection of the law and are likewise a violation of the Constitution of the State of Georgia Article 1, Section 1, Paragraph 2 as contained in Section 6358 of the Code of the State of Georgia, in that it denies to defendants the impartial and complete protection of their property and also violates Article 1, Section 1 paragraph 3 of the Constitution of the State of Georgia, as contained in Section 6359 of the Code of the State of Georgia, in that it deprives each of defendants of their property without due process of law and is in violation of Article 1, Section 3, Paragraph 1, of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia, in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid.

Wherefore, having fully answered, defendants pray that the restraining order heretofore granted in said case be dissolved and that the injunction prayed for in said petition be denied.

[fol. 125] Defendants further pray that petitioner be restrained and enjoined, by itself or by any of its officers, or agents or employees from undertaking to enforce against

the property of defendants the costs of the paving and street improvement hereinabove set out.

Hugh Burgess, Colquitt & Convers, Attorneys for Defendants.

Duly sworn to by P. S. Arkwright and Thos. K. Glenn. Jurat omitted in printing.

[fol. 126-128] Exhibit A to answer omitted; printed side page 58 ante.

Exhibit "B" to Answer omitted; Printed side page 44 ante.

[fols. 129-130] Exhibit "C" to Answer omitted; printed side page 48 ante.

[fol. 131] Exhibit "D" to Answer omitted; printed side page 47 ante.

[fol. 132] Exhibit "E" to Answer omitted; printed side page 49 ante.

[fol. 133] [File endorsement omitted.]

In Superior Court of DeKalb County

[Title omitted.]

Amendment to Answer—Filed April 10, 1926

Defendants in the above stated case by leave of the Court first had, amend their answer in said case as follows to wit:

(20) Said ordinance of plaintiff, undertaking to assess the costs of said pavement against defendants applies to defendants a different rule of assessment from that applied

to the other property owners abutting along the streets to be paved. Said ordinance and plaintiff in the enforcement of the same is undertaking to put a different and more costly pavement in that portion of said street for which the charge is to be assessed against the defendants from that which is assessed against said other abutting property owners, the costs of assessment against defendants being proportionately much greater than such costs against other property owners. Said ordinance, and the action of plaintiff in enforcing the same are discriminatory as against defendants, particularly as against defendant Georgia Railway & Electric Company, the owner of the property along which said pavement is laid, and are a violation of the 14th Amendment of the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia, in that it is a depriving of each of the said defendants of its property without due process of law and a denial to each [fol. 134] of the defendants of the equal protection of the law, and are likewise a violation of the Constitution of the State of Georgia, Article 1, Section 1, paragraph 2 as contained in Section 6358 of the Code of the State of Georgia in that it denies to defendants the impartial and complete protection of their property and are also violative of Article 1, section 1, paragraph 3 of the Constitution of the State of Georgia, as contained in Section 6359 of the Code of the State of Georgia in that it deprives each of defendants of their property without due process of law, and are a violation of Article 1, Section 3, paragraph 1 of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia, in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid. Said violations of each of said portions of said Constitutions are partiicularly aggravated, because plaintiff is seeking to sell under execution based upon said assessment not only the property of the Georgia Railway & Electric Company abutting said improvement, but also property of both of said defendants which is not abutting on said proposed improvements and which is not located in any wise near or contiguous thereto.

(21) Said ordinance of plaintiff, and the Acts of the Legislature of Georgia (Acts 1919 page 934, et seq.) which

purports to authorize the passage of said ordinance, and the action of plaintiff in undertaking to assess the whole costs of said improvement against defendants are unconstitutional in that the whole costs of the paving and improvement for the portion of the street between the street car tracks and for 2 feet on each side is assessed against defendants without regard to whether such paving and im-[fol. 135] provement is of any special benefit to the property of the defendants abutting thereon or not. For this reason said Act of the Legislature and said ordinance and said assessment and the enforcement thereof are discriminatory as against defendants, particularly as against defendant Georgia Railway & Electric Company, the owner of the property along which said pavement is laid, and are a violation of the 14th Amendment of the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia in that it is a depriving of each of said defendants of its property without due process of law and a denial to each of the defendants of the equal protection of the law, and are likewise a violation of the Constitution of the State of Georgia Article 1, Section 1, paragraph 1 as contained in Section 6358 of the Code of the State of Georgia in that it denies to defendants the impartial and complete protection of their property, and are also violative of Article 1, Section 1, paragraph 3 of the Constitution of the State of Georgia, as contained in Section 6359 of the Code of the State of Georgia in that it deprives each of defendants of their property without due process of law, and are a violation of Article 1, Section 3, Paragraph 1 of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia, in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid. Said violations of each of said portions of said Constitution are particularly aggravated, because plaintiff is seeking to sell under execution based upon said assessment not only the property of the Georgia Railway & Electric Company abutting said improvement but also property of both of said defendants which is not abutting on [fol. 136] said proposed improvement and which is not located in anywise near or contiguous thereto.

(22) Said Act of the Legislature and said ordinance and said assessment of the costs of said paving and improve-

ment against defendants are also unconstitutional, and void for the reason that as construed by the Appellate Courts of the State of Georgia, said assessment can be collected out of not only the property affected by said improvement but out of any other property of defendants, and said assessment according to such construction, is held good unless the amount of it exceeds the full value of the property affected as such value will exist even after said improvements have been made; and plaintiff can and will enforce said assessment by selling not only the property affected by said improvement, but to collect the deficit under said sale, by selling other property of the defendants. For this reason said Act of the Legislature and said ordinance and said assessment and the enforcement thereof are discriminatory as against defendants, particularly as against defendant Georgia Railway & Electric Company, the owner of the property along which said pavement is laid, and are a violation of the 14th Amendment of the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia, in that it is a depriving of each of said defendants of its property without due process of law and a denial to each of the defendants of the equal protection of the law, and are likewise a violation of the Constitution of the State of Georgia Article 1, Section 1, paragraph 1, as contained in Section 6358 of the Code of the State of Georgia in that it denies to defendants the impartial and complete protection of their property, and are also violative of Article 1, Section 1, paragraph 3 of the [fol. 137] Constitution of the State of Georgia as contained in Section 6359 of the Code of the State of Georgia in that it deprives each of defendants of their property without due process of law, and are a violation of Article 1, Section 3, Paragraph 1 of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia, in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid. Said violations of each of said portions of said Constitution are particularly aggravated, because plaintiff is seeking to sell under execution based upon said assessment not only the property of the Georgia Railway & Electric Company abutting said improvement, but also property of both of said defendants

which is not abutting on said proposed improvement and which is not located in any wise near or contiguous thereto.

(23) Said assessment is confiscatory and unconstitutional for the reason that the costs of said improvements which plaintiff can and will collect out of any property of defendants, whether abutting or not upon said improvements, is greater than the entire value of the property of defendants abutting said improvements and affected thereby, even as such value will exist, after the making of said improvements. Defendants here and now, to escape the levy of said assessments and the collection of the amount thereof from edfendants, offer to surrender to plaintiff all the property of defendants abutting along said improvements and effected thereby and all rights of defendants in and to the same. For this reason said Act of the Legislature and said ordinance and said assessment and the enforcement thereof are discriminatory as against defendants particularly as against defendant Georgia Railway & [fol. 138] Electric Company the owner of the property along which said pavement is laid, and are a violation of the 14th Amendment of the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia, in that it is a depriving of each of said defendants of its property without due process of law and a denial to each of the defendants of the equal protection of the law, and are likewise a violation of the Constitution of the State of Georgia, Article 1, Section 1, paragraph 1, as contained in Section 6358 of the Code of the State of Georgia in that it denies to defendants the impartial and complete protection of their property, and are also violative of Article 1, Section 1, paragraph 3 of the Constitution of the State of Georgia as contained in Section 6359 of the Code of the State of Georgia in that it deprives each of defendants of their property without due process of law, and are a violation of Article 1, Section 3, Paragraph 1 of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia, in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid. Said violations of each of said portions of said Constitution are particularly aggravated, because plaintiff is seeking to sell under execution based upon said assessment not

only the property of the Georgia Railway & Electric Company abutting said improvement, but also property of both of said defendants which is not abutting on said proposed improvement and which is not located in anywise near or contiguous thereto.

(24) Defendants show that said ordinance of plaintiff undertaking to assess the costs of paving against defendants; and the Act of the Legislature of Georgia of 1919 [fol. 139] (Acts 1919, page 934, et seq.) which purport to authorize the passage of said ordinance, and the action of plaintiff undertaking to assess the amount of said improvements against defendants are unconstitutional and violative of Article 7, Section 2, Paragraph 1 (found in Code Section 6553 of the Code of the State of Georgia) in so far as the same can be considered as a tax levied upon defendants personally or upon defendant's property; for the reason that under said constitutional provision all taxation should be uniform under the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax and collected under general laws, and should be levied and collected under general laws; and the assessment sought to be levied by plaintiff against defendant, and the said Act of the Legislature under which the assessment is sought to be levied violates such constitutional provision in that the tax is not uniform, in that the tax is not ad valorem and in that it is not sought to be levied and collected under general laws, but under a special act, and in that it undertakes to create a personal liability against defendants and is not uniform for that no personal liability is created against others subject to assessment under said act and under said ordinance.

(25) Defendants further show even if there is fixed fare while defendants operate under said franchise and that even if defendants are liable for all the paving assessments as herein set out and described, while so operating, nevertheless the plaintiff cannot compel defendants to continue to operate when defendants surrendered and offered to surrender the entire franchise and all rights thereunder and [fol. 140] also offered to surrender, as set out in paragraph 23 of this answer the property of defendants. That the contract fare can and merely does fix a rate while the defend-

ants are operating under said franchise; and for the plaintiff to impose the additional burdens herein set out and at the same time deny defendants the right to surrender its franchise and all rights thereunder and its action in refusing to accept said surrender are a violation of the 14th Amendment of the Constitution of the United States as contained in Section 6700 of the Code of the State of Georgia, in that it is a depriving of each of said defendants of its property without due process of law, a confiscation of each of defendants property and a denial to each of the defendants of an equal protection of the law; and likewise a violation of the Constitution of the State of Georgia, Article 1, Section 1, Paragraph 2 as contained in Section 6358 of the Code of the State of Georgia in that it denies to defendants the impartial and complete protection of their property and are also violative of Article 1, Section 1, Paragraph 3, of the Constitution of the State of Georgia as contained in Section 6359 of the Code of the State of Georgia, in that it deprives each of defendants of their property without due process of law, and are a violation of Article 1, Section 3, paragraph 1 of the Constitution of the State of Georgia, as contained in Section 6388 of the Code of Georgia in that it is a taking of the private property of defendants for public purposes without just and adequate compensation first being paid. While insisting upon a fixed 5 cent rate of fare the revenue received from which, as heretofore set out in the answer, does not meet operating expenses; the plaintiff by the ordinance Exhibit "B" of the answer adds other and additional burdens which de-
[fol. 141] fendants cannot meet; while by another ordinance Exhibit "A" of the answer it unconstitutionally denies the defendants the right to surrender the entire franchise received from plaintiff.

Colquitt & Conyers, Hugh Burgess, Attorneys for Defendants.

Duly sworn to by P. S. Arkwright and Thos. R. Glenn. Jurat omitted in printing.

[fol. 142] The foregoing amendment allowed and ordered filed as a part of the record in said case. April 10th, 1926.

John B. Hutcheson, J. S. C. St. Mt. C.

[File endorsement omitted.]

IN SUPERIOR COURT OF DE KALB COUNTY

[Title omitted]

AMENDMENT TO ANSWER CROSS-BILL—Filed July 18, 1928

The Georgia Power Company, a corporation of said State represents to the Court, in which representation the Georgia Railway & Electric Co., & the Georgia Railway & Power Co., join as follows, to wit:

Since the filing of the above-stated case, and pending said litigation the Georgia Railway & Electric Company and the Georgia Railway & Power Company have been consolidated and merged into the Georgia Power Company.

Said Georgia Power Company adopts as its own all the pleadings heretofore filed by the defendants in said case, and prays that it be made party defendant in said case, with right to make and carry on all the defenses and claims for counter-relief filed and made by said original defendants and such other defenses and counter-claims as to it may seem fit & which are legal or equitable.

Colquitt & Convers, Attys. Defendants.

[fols. 143 & 144] The foregoing amendment is allowed and the Georgia Power Company is made defendant to said suit with rights as in said amendment prayed & all other rights of a defendant in said case.

This July 14th, 1928.

John B. Hutcheson, Judge Sup. Ct. St. Mt. C.

[File endorsement omitted.]

IN SUPERIOR COURT OF DE KALB COUNTY

DECREE—Sept. 15, 1928

The foregoing case coming on for a final hearing and by consent of parties heard before me acting as Judge and Jury after evidence and argument, it is adjudged and decreed that defendant in said case be and it is hereby enjoined as prayed for in the petition. Judgment for $— costs is rendered against defendant.

John B. Hutcheson, Judge S. C. St. Mt. C.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 145] IN SUPREME COURT OF GEORGIA

6849

GEORGIA POWER CO.

v.

CITY OF DECATUR

JUDGMENT—April 15, 1929

This case came before this court upon a writ of error from the superior court of De Kalb county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Except Presiding Justice Beck, all of the Justices of the Supreme Court were disqualified to preside in this case. Their honors, W. W. Stark, Wm. E. H. Searcy, Jr., James Maddox and I. H. Sutton, Judges of the Superior courts were designated by the Governor and presided in place of the disqualified Justices. The Presiding Justice and all of the Judges concur in the judgment.

[fol. 146] IN SUPREME COURT OF GEORGIA

GEORGIA POWER COMPANY

v.

CITY OF DECATUR

OPINION—April 15, 1929

1. Except the question made as to the effect upon the contract involved in this case between the City of Decatur and the predecessor of the Georgia Power Company, by the offer to surrender to the city the franchise or permit now held by the Georgia Power Company under that con-

tract, the issues in the instant case were involved in Georgia Railway and Power Company v. Town of Decatur, 153 Ga. 329, and were passed upon by this court in the decision rendered in that case.

2. To allow the Georgia Power Company to surrender its franchise or permit and to tear up its tracks would in effect be to allow that company to terminate a contract which has been held valid and which is binding upon the Power Company because of its relation to the corporation which entered into the contract and received the benefits thereof; and this cannot be done, because of the law which makes a valid contract effective according to its terms. And that principle is especially applicable in this case, because, if the contract is set aside or ignored, the situation of the parties anterior to the contract and at the time of making the same can not be restored, inasmuch as the predecessor of the Georgia Power Company, which is now enjoying the benefit of the franchise or permit granted in pursuance of the contract, was permitted to take up and remove another street-railway to Decatur, which served that city and which would probably have continued to be operated had not the predecessor of the Georgia Power Company been permitted to remove the tracks of that railway and substitute therefor the present street-railway; and this permission to remove the tracks of the former railway was [fol. 147] a part of the consideration of the contract now under review.

STARK, Judge:

This suit had its origin in the decision of the City of Decatur in 1925 to pave its streets in accordance with an act of the legislature of Georgia, and to assess certain of the expenses of paving against the street-railway. On July 9, 1925, plaintiff in error notified the City of Decatur that unless it was relieved of the burden of this paving expense, it would be "willing to surrender to the City of Decatur the franchise for this line and remove the tracks from the streets." The city refused this proposition. On September 26, 1925, a communication was addressed to the mayor and commissioners of Decatur, stating, among other things, that the "Georgia Railway and Power Company, as the lessees thereof, concurring herein, hereby formally

surrenders the said permits and franchises granted by the Town and City of Decatur for the construction and operation of the said electric railway hereinbefore referred to." Attached to this notice was a certified copy, or copies, of the resolutions by the board of directors of the Georgia Railway and Electric Company and the Georgia Railway and Power Company. The notice recited when the discontinuance would be put in operation. On September 28, 1925, the City of Decatur by proper resolution refused to accept the surrender of the said franchise, or permit, tendered to it by the street-railway companies, as it would not be to the interest of the city to accept the same. The City of Decatur then filed this equitable petition against the Georgia Railway and Electric Company and the Georgia Railway and Power Company, to prevent the abandoning of these lines, setting up the contract made and entered [fol. 148] into between the city and said street railway companies. Pending this litigation the Georgia Railway and Electric Company and the Georgia Railway and Power Company have been consolidated and merged into the Georgia Power Company. In further discussion of this case we will refer to the ordinance of March 3, 1903, of the City of Decatur and the contract entered into in pursuance thereof, dated April 1, 1903, as if made with the Georgia Power Company instead of Georgia Railway and Electric Company and Georgia Railway and Power Company.

It would seem that every attack that could be made upon this contract of April 1, 1903, has been made by the Georgia Power Company. When it was before this court the last time (Georgia Railway & Power Co. v. Decatur, 153 Ga. 329, S. E. —), it was stated by Wright, Judge: "While the plaintiff in error now insists that some ten distinct points of attack upon the validity of the contract are made in the present appeal that were not made in the mandamus case (149 Ga. 1), it is not and can not be insisted that the identical questions of law were not involved upon the first hearing of the interlocutory injunction (152 Ga. 143, 108 S. E. 615) as are now involved upon this second appeal." We have examined the original record in this court when the case was here before, that we might again have before us the "ten distinct points of attack upon the validity of the contract" referred to in the decision; and every con-

trolling issue was distinctly made and passed upon in that case that is made in the case now before us, unless it be the offer to surrender back to Decatur the franchise, or permit. In paragraph 37 of the company's answer it said: "Defendants show and allege that said so-called contract is indefinite as to the time it is to run; said provision contains no [fol. 149] definite or fixed time during which a fare of five cents is to be charged, and because of said indefiniteness said so-called contract provision is revokable on notice, and as shown by exhibit "D" attached to the petition defendants have served notice on petitioner, terminating said contract on the twentieth day of October, 1920, and so-called contract, if it ever had any force and effect, is now terminated." The company further set out in its answer and cross-bill a copy of the order of the Railroad Commission of the State of Georgia, dated September 22, 1920, among other things stating: "The five-cent fares now in effect on the main Decatur line, * * *, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory on these routes, are discriminatory. This Commission is without power to increase them."

"Defendants further allege that provisions, or contracts, with reference to rates, or fare, being with reference to a legislative or police power, must be for a definite term, not grossly unreasonable, and that where the provisions as to rates are indefinite it is revokable on notice under changed conditions."

The validity of said contract and the terms thereof have been upheld by this court three different times, and by the Supreme Court of the United States. Georgia Railway & Power Co. v. Railroad Commission, 149 Ga. 1; Georgia Railway & Power Co. v. Decatur, 152 Ga. 143; Georgia Railway & Power Company v. Decatur, 262 U. S. 438 (67 L. ed. 1074). Now that the Georgia Power Company can no longer attack the contract, it proposes to abrogate the terms thereof, by surrendering its permit, or franchise, to the City of Decatur, and tear up and remove its rails; and the notice already referred to was given to the City of [fol. 150] Decatur by the Georgia Power Company of its in-

tention to surrender the franchise and cease operation. It was then that the present injunction was filed by the City of Decatur against the Georgia Power Company. We do not deem it necessary in this case to go back of the litigation between the City of Decatur and the Power Company in 1902; but the fact of said litigation and the terms of the settlement of the same that was finally consummated in the ordinance of March 3, 1903, and the contract of April 1, 1903, are germane and very material to the decision of this case. In the negotiations leading up to the settling of the litigation, and the contract made in pursuance thereof, the Power Company was "urging as a reason for such action by Mayor and Council that, if allowed to take up and discontinue said line known formerly as Atlanta Railway Company, said Georgia Railway and Electric Company could and would give to the citizens of said town of Decatur better street-car facilities upon another parallel line of street-railway between the City of Atlanta and the Town of Decatur owned by said Georgia Railway and Electric Company." The terms of this ordinance and contract in pursuance thereof show that it was to be a permanent operating contract between the street-railway company and the City of Decatur. In section 2 of said ordinance and contract it is stipulated that the Georgia Railway and Electric Company, its successors and assigns, whether by contract or by operation of law, shall be bound to do the following things: * * * "To never charge more than five cents for any fare." And then in paragraph 4, providing for the double-tracking in the City of Decatur with reference to this loop: "the loop already described in the Town of Decatur being considered a double track;" and further stipulating: "Which said double track, when completed, shall be [fol. 151] maintained in a substantial, safe, and expeditious manner, and shall be operated with cars and rolling-stock kept in a safe and comfortable condition. Permission to construct said double track in the Town of Decatur is hereby granted."

To allow the plaintiff in error to surrender its franchise and permit and tear up its track would destroy the very terms of the contract itself. It is not so much the franchise that we are dealing with, but the specific contract made in pursuance thereof. The terms of it are that the

company will "never" charge more than five cents for one fare, and that it will maintain the track in a substantial and safe manner and operate it with rolling-stock. When this contract was before the Supreme Court of the United States (262 U. S. 438, supra), that court said with reference to the duration of this contract that "this contract would remain effective until there should be conflicting legislative actions." Under the constitution (Code, § 6448), all that towns and cities have to give to the construction of passenger street-railways within the limits of the same is the consent of the corporate authorities. Regardless of whether the assignments of error in the bill of exceptions raise the question of the expiration of the charter of the Collins Park and Belt Railroad Company, so that it can be considered by this court, it is clear that the City of Decatur, under said contract, could not deny that it had given its consent to the construction of this street-railway system upon its streets. The consent, if not expressly given in this contract, is necessarily implied. All the permit necessary to the use of the streets of Decatur by the Georgia Power Company is either expressly granted or necessarily implied from the terms of said contract. This permit was given to the predecessor of the plaintiff in error. The line sought to be abandoned in the City of Decatur is a part of [fol. 152] a large street-railway system operated by the Georgia Power Company, and the company seeks to abandon the part of this line in Decatur. This, under the terms of its contracts, it cannot do. Fort Smith Light & Traction Co. v. Fagan, 267 U. S. 330.

The case of Morris v. Atlanta Northern Railway Co., 160 Ga. 774, if it is authority at all upon the controlling question in this case, does not strengthen the position of the plaintiff in error. The court in that case quoted approvingly what was said in Coffee v. Gray, 158 Ga. 218, as follows: "Apart from statute, or express contract, the people who put their money in a railroad are not bound to go on with it at a loss, if there is no reasonable prospect of profitable operation in the future." But in the instant case it appears that there was an express contract, and as a part of the consideration of that contract the railway company was permitted to tear up the track of another street-railway which was then serving the City of Decatur

and would have continued to serve it. Bullock v. Florida, 254 U. S. 513 (41 Sup. Ct. 193, 65 L. ed. 380); Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396. The trouble with the plaintiff in error is, it has made an "express contract" with Decatur not to charge more than five cents for one fare. We can take judicial cognizance of the deflation in the value of the dollar, as contended by plaintiff in error, but how can that help the Georgia Power Company under the terms of its contract? And the Supreme Court of the United States said, with reference to this rate contract: "The contract being valid, we are not concerned with the question whether the stipulated rates are confiscatory." The parties having entered into an express contract as to what the fare should be, it is immaterial whether it is confiscatory or discriminatory. Having held, according to the ordinance of the City of Decatur of March 3, [fol. 153] 1903, and the express contract in pursuance thereof, entered into April 1, 1903, that the Georgia Power Company cannot surrender its franchise, or permit, and abandon its line and tear up the tracks from the street, the other questions involved in this case were decided when this contract was before the court in Georgia Railway & Power Co. v. Decatur, 153 Ga. 329 (supra).

Judgment affirmed. The Presiding Justice and the other Judges concur.

[fol. 154] IN SUPREME COURT OF GEORGIA

[Title omitted]

PETITION FOR REHEARING AND MOTION IN THE NATURE OF A REHEARING—Filed April 23, 1929

Georgia Power Company, plaintiff in error in the above stated case, within 10 days from the date of the decision adversely to it in the above stated case, comes now and files this its petition for rehearing and motion in the nature of a rehearing in said case upon the following grounds to wit:

In the opinion as handed down in said case the Court refers to a former case between the Georgia Railway &

Power Company, predecessor of this present plaintiff in error, and the City of Decatur, as reported in the 153 Georgia page 329, same being No. 3019 in said Court. The record in said case No. 3019 as made up in the trial court, to wit, De Kalb Superior Court, and as contained in the records of the Supreme Court of Georgia, was not introduced in evidence or made any part of the agreed statement of facts or incorporated in the brief of evidence of the present case as tried in De Kalb Superior Court and sent by writ of error to the Supreme Court.

Notwithstanding the accuracy of the statement immediately foregoing, the Supreme Court, in the decision of the present case, referred to the record in said former case No. 3019, and incorporated in their opinion in this case alleged extracts from the record in said former case. Without contesting in any way the right and authority of the Supreme Court thus to refer to and make use of said former record, movant submits that any extracts therefrom used in the opinion in the present case should be accurate and not inaccurate extracts; and movant respectfully suggests [fol. 155] and insists that in two instances the Court in the opinion in the instant case made inaccurate extracts from and reference to the record in said former case No. 3019. The two instances of thus overlooking the record and making inaccurate extracts from and reference thereto to which movant calls particular attention, and upon which movant founds this motion for rehearing, are as follows, to wit:

First. The Court in the opinion in the present case uses the following language:

"The Georgia Power Company in that case (No. 3019) set up the expiration of the charter of The Collins Park and Belt Railroad Company."

Movant respectfully insists that this is an utterly inaccurate statement. No such contention was set up anywhere in the record in said former case. The only reference in the record in said former case to the Collins Park and Belt Railroad Company at all was the statement in said record that the franchise under which the line involved in this litigation was laid in the streets of Decatur was a franchise originally granted by Decatur to the Collins Park and Belt

Railroad Company and by subsequent assignment vested in the predecessor of the Georgia Power Company. The charter of the Collins Park and Belt Railroad Company was nowhere in said former record mentioned or even remotely alluded to. Movant now moves the Court for a rehearing in said case and for an expunging from said opinion of the language above quoted. This motion is made, and the action is important to the interests of movant, for the reason that movant intends to appeal said decision in the instant case to the Supreme Court of the United States, and it is necessary, in order for the rights of movant to be fairly adjudged in said court, to have the record in the case freed from this inaccurate and damaging statement.

[fol. 156] Second. The Court in the opinion in the instant case refers to the answer of the defendant (movant's predecessor) in the former case, and to paragraph 37 of said answer, and quotes as follows:

"Defendants show and allege, that said so-called contract is indefinite as to the time it is to run; said provision contains no definite or fixed time during which a fare of five cents is to be charged, and because of said indefiniteness said so-called contract provision is revokable on notice, and as shown by Exhibit "D" attached to the petition defendants have served notice on petitioner terminating said contract on the twentieth day of October, 1920, and said so-called contract, if it ever had any force and effect, is now terminated."

As appears from the extracts thus quoted, said paragraph of the answer referred to and incorporated therein Exhibit "D" of plaintiff's petition in said former case, which said Exhibit "D," as appears from the record in said former case is as follows, to wit:

"To the Mayor and Council of Town of Decatur and to the Town of Decatur:

You are hereby notified that on and after the 20th day of October, 1920, the fare to and from Atlanta and Decatur on the Main or North Decatur line operated by the Georgia Railway & Power Company will be at the rate of seven (7) cents.

Denying the validity or legality of any so-called contract provision limiting such fare to five (5) cents, (set out in an ordinance of the Town of Decatur of March 3rd, 1903, and an agreement of April 1st, 1903, signed by the Town of Decatur and Georgia Railway & Electric Company); you are notified that even if the provision with reference to fare, to and from Atlanta and Decatur, was binding at any time, it is not now binding or legal, and is hereby terminated from and after the above named date.

[fol. 157] This 5th day of October, 1920.

Georgia Railway & Power Company, by P. S. Arkwright, President. Georgia Railway & Electric Company, by John C. Hallman, President."

Movant submits that if the quotation from said former record of paragraph 37 of the defendant's answer therein is to remain in said opinion, then in fairness to this movant, especially in view of the intended appeal, the foregoing Exhibit "D" which was made a part of said paragraph of said answer should also be incorporated in the opinion since it was referred to and incorporated in said paragraph of said answer.

Wherefore movant respectfully prays for a rehearing in said case and for a modification of said opinion as herein set out and for such order and direction in the premises as will preserve the rights of movant and make said opinion conform to the record as above stated.

Colquitt & Conyers, Attorneys for Movant.

[File endorsement omitted.]

Duly sworn to by Walter T. Colquitt. Jurat omitted in printing.

[fol. 158] In Supreme Court of Georgia

[Title omitted]

Order on Petition for Rehearing—April 29, 1929

Upon consideration of the motion for rehearing filed in this case it is ordered that a rehearing be granted by briefs alone to be filed with the clerk of this court by 9 o'clock a. m.,

on Saturday, May 18, 1929. At the same time let counsel for the defendant in error show cause in writing why the judgment of this court of April 15, 1929, should not be vacated.

Let a copy of this order be mailed to counsel for each side, and let a duplicate copy of the motion for rehearing be furnished to counsel for the defendant in error.

[fol. 159] IN SUPREME COURT OF GEORGIA

6849

GEORGIA POWER CO.

v.

CITY OF DECATUR

JUDGMENT AFTER REHEARING—June 28, 1929

Upon consideration of this case after rehearing it is ordered that the judgment of this court rendered therein on April 15, 1929, be hereby adhered to.

[fol. 160] IN SUPREME COURT OF GEORGIA

[Title omitted]

ORDER CERTIFYING DISQUALIFICATION OF JUSTICES—Dec. 5, 1928

It appearing to the Court that Chief Justice Russell and Associate Justices Atkinson, Hill, Gilbert and Hines are disqualified to preside in the above stated case:

It is ordered that the fact of their disqualification be certified to the Governor, in order that he may designate five Judges of the Superior Courts to preside in said case in lieu of the disqualified Justices.

The Governor is requested to procure the attendance of the Judges designated by him on Saturday, December 15, 1928, at 9 o'clock A. M.

[fol. 161] IN SUPREME COURT OF GEORGIA

State of Georgia, Executive Department, Atlanta

In re

GEORGIA RY. & POWER CO.

vs.

CITY OF DECATUR

Supreme Court

ORDER DESIGNATING JUDGES—Filed Dec. 12, 1928

Whereas, The Supreme Court of Georgia advises by official order that the trial of the above named case has been set for Saturday, December 15, 1928, at 9 o'clock A. M., and that Chief Justice Russell and Associate Justices Atkinson, Hill, Gilbert and Hines are disqualified to preside in the above case, it is

Ordered: That the following Judges of the Superior Courts shall preside in the trial of the above stated case on Saturday, December 15, 1928 at 9 o'clock A. M., in lieu of the disqualified Justices:

Hon. I. H. Sutton, Judge of the Superior Courts of Northeastern Circuit.

Hon. James Maddox, Judge of the Superior Courts of Rome Circuit.

Hon. Wm. E. H. Searcy, Judge of the Superior Courts of Griffin Circuit.

Hon. Blanton Fortson, Judge of the Superior Courts of Western Circuit.

Hon. W. W. Stark, Judge of the Superior Courts of Piedmont Circuit.

This December 6, 1928.

L. G. Hardman, Governor.

By the Governor: Mattie H. Carrington, Secretary Executive Department.

GEORGIA,
Fulton County:

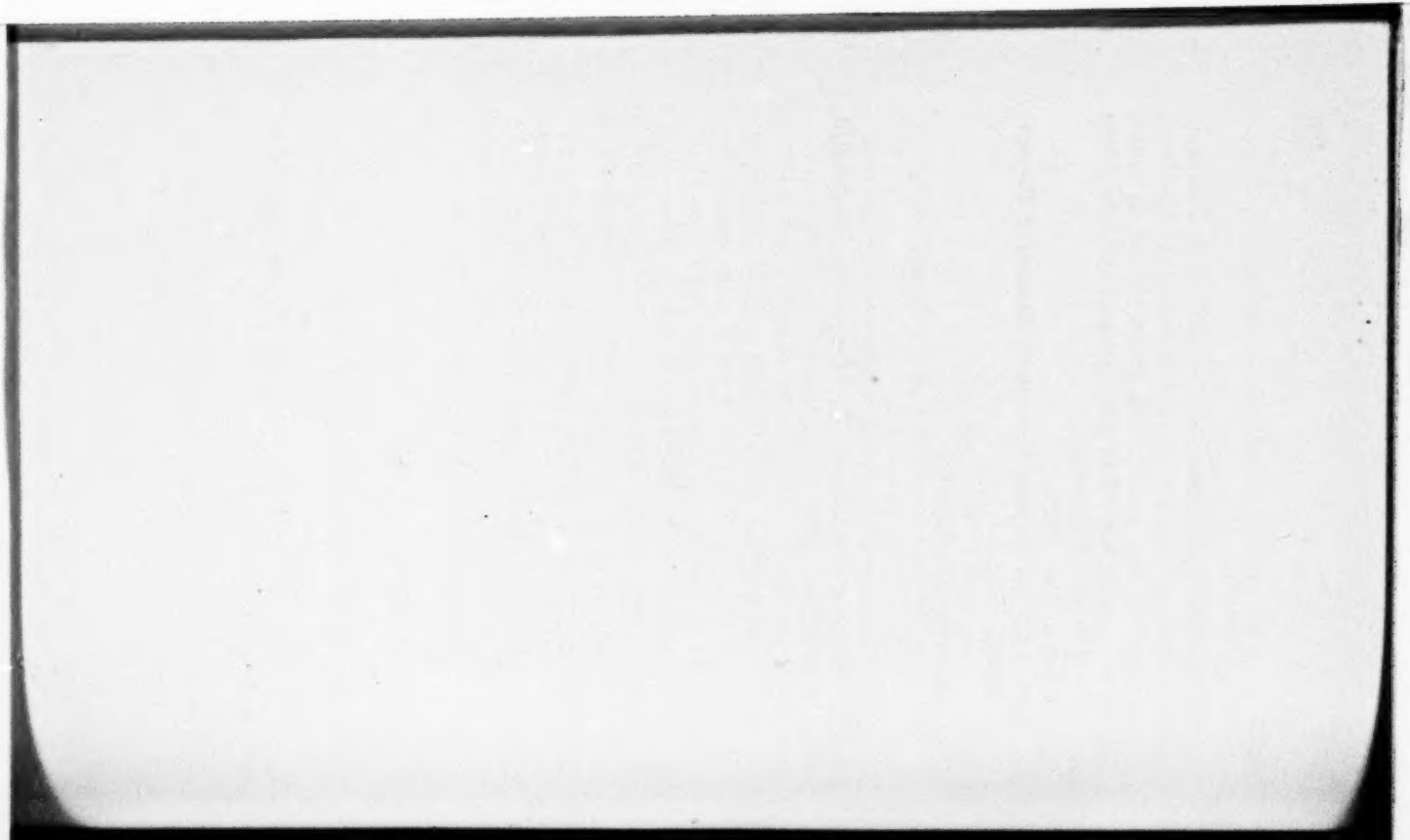
The undersigned as Secretary of the Executive department of the State of Georgia, hereby certifies that the above and foregoing is a true and correct transcript of an order, writing or document, signed by the Governor of said State and of record in this department.

This 11 day of Dec. 1928.

Mattie H. Carrington, Secretary Executive Department.

[File endorsement omitted.]

[fol. 162] Clerk's certificate to foregoing transcript omitted in printing.



SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.